UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Wiley Randolph Kuyrkendall
Defendant – Appellant

RECEIVED
MAR 30 2017
United States Court of Appeals
For The Federal Circuit

v.

UNITED STATES
Plaintiff – Appellee

17-1713

Opposition to APPELLEE'S MOTION TO TRASFER APPEAL TO THE FIFTH CIRCUIT AND HOLD BREIFING IN ABEYANCE

Come now, Wiley Randolph Kuyrkendall ("Kuyrkendall') with this **Opposition ("Opposition") to APPELLEE'S MOTION TO TRASFER APPEAL TO THE FIFTH CIRCUIT AND HOLD BREIFING IN ABEYANCE. ("Bringer Motion")**

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I. General Info.

As it is the Duty of the Appellant in the Appellant's Brief to **First (1)** establish the **"Subject Matter Jurisdiction"** for the United States Court of Appeals for the Federal Circuit ("Federal Circuit"); and**, Second (2)** to establish the **"Personal Jurisdiction"** of Kuyrkendall in the Federal Circuit of the "Subject Matter Jurisdiction" is a *sine qua non* being does Jorah E. Bringer ("Bringer") have standing to raise this Question to the Federal Circuit at this time of Motioning the Federal Circuit to Move Kuyrkendall's Case back to the Court of Appeals for the 5th Circuit ("5th Cir.")?

II. Bringer Has Knowledge That the Federal Circuit is Different From the 5th Circuit And Does She Have Standing in the Federal Circuit

A. "UNITED STATES" versus "UNITED STATES OF AMERICA"

In the United States District Court for the Southern District of Mississippi ("USDC") the **Plaintiff** was the ***"UNITED STATES OF AMERICA"*** *v. Kuyrkendall, et al.*, 3-14-cv-751 (S.D. Miss. 2016) as evidenced by the **Attachment 1—Docket Sheet of USDC S.D. Miss., Case 3-14-cv-751 ("A1—USDC")**.

In the 5th Cir. even though Kuyrkendall filed in a Notice of Appeal to the Federal Circuit with the **"The United States"** as evidenced in the Docket 1 of the 5th Circuit being **Attachment 2—Notice of Appeal to the Federal Circuit ("A2—**

Notice in 5th Cir."); wherein, the 5th Cir. opened the appeal with **Case No. 17-60031** as **"UNITED STATES OF AMERICA"** as the **"Plaintiff—Appellee"** with "Robert E. Dozier, **U.S. Department of Justice**, Tax Division, P.O. Box 14193, Ben Franklin Station, Washington, D.C. 20044-0000" being listed as "representing" the **"UNITED STATES OF AMERICA"** evidenced by **Attachment 3—Docket Sheet of 5th Cir. ("A3—5th Cir. Docket").**

Now in the Federal Circuit evidenced by **Attachment 4—Docket Sheet of the Federal Circuit ("A4—Fed. Cir. Docket"),** the Federal Circuit has opened an Appeal with Case No. 17-1613 with the **"UNITED STATES"** as the **Plaintiff-Appellee.**"

As evidenced by **Attachment 5— Doc 2—Bringer's Appearance ("A5—Bringer App."),** Bringer claims to be representing the "United States."

As evidenced by **Attachment 6—Bringer's Motion (A6—Bringer Motion"),** Bringer has the **"UNITED STATES**, Plaintiff-Appellee in as the real party of interest; and, in **A6—Bringer Motion** Pg. 1 one, Bringer claims to be the "undersigned counsel" of the "United States."

As evidenced in **A6—Bringer Motion,** pgs. 9-10, therein is an attached "Declaration" where Bringer claims to be, to wit:

DECLARATION

I, Norah E. Bringer, of the **Department of Justice**, Washington, D.C., state as follows:

1. I am an attorney employed in the Appellate Section of the Tax Division, **United States Department of Justice**, and in that capacity I have been assigned the primary responsibility for handling the above-captioned case on **behalf of the appellee**.
2. The facts set forth in the accompanying motion are true to the best of my knowledge and belief.

I declare under **penalty of perjury**, pursuant to 28 U.S.C. § 17 46, that the **foregoing is true and correct**. Executed on March 16, 2017, in Washington, D.C.

/s/ Norah E. Bringer

NORAH E. BRINGER

How does the Plaintiff in the USDC and the 5th Circuit "change" from the **"UNITED STATES OF AMERICA" to the "UNITED STATES?"** Is the "UNITED STATES" a sovereign body politic? Is the "UNITED STATES OF AMERICA" exactly the same as the "UNITED STATES?" This reeks of "legal realism" wherein the adulteration and obfusation of the essential elements of the real Party of Interest (Plaintiff) demonstrating animus that is practiced by many Judges and Attorneys as explained[1] by Ben Stein, a graduate of Yale, where the Yale Law School teaches lawyers what is known as "legal realism[2]," wherein they

[1] Judge Jeanine Pirro Show on Fox, March 18, 2017 with the guest of Ben Stein, a Graduate of Yale Law School.

[2] *Trans World Airlines, Inc, v. Franklin Mint Corp*, 466 U.S. 243, 281 (1984) *Justice Stevens dissenting.* "Unfortunately, however, cynics—parading under the banner of **legal realism**—are given a measure of credibility whenever the Court bases a decision on its own notions of sound policy, rather than on what the law commands."; *Harper v. Virginia Dept. of Taxation*, 508 U.S. 86, 106 (1993) "It was formulated in the heyday of **legal realism** and promoted as a "techniqu[e] of **judicial lawmaking**" in general, and more specifically **as a means of making it easier to overrule prior precedent**. B. Levy, Realist Jurisprudence and

are NOT bound to Laws of the United States, NOT bound by the Laws of the several States, NOT bound by the Statues of the United States, NOT bound by the Statutes of the several States and are NOT bound by the precedents of the constitutional Courts of the several States or of the of precedents the constitutional Courts of the United States arising under Article III Section 2.

As evidenced in two other similar Reduce to Judgement Cases of the "UNITED STATES OF AMERICA" of the Internal Revenue Service ("IRS") the Department of Justice to wit:

> "Plaintiff, the **United States of America,** is a **sovereign body politic**." See *United States of America v. Charles Stevens*, 3-13-cv-375 Docket 1 [pg. 3 #6]—Complaint (USDC M.D.Fla. 2013); *United States of America v. James Edward MacAlpine*, 1-13-cv-63 Docket 1 [pg. 1, #5]—Complaint USDC W.D. N.C. 2013)

This "sovereign body politic" can only be relegated to the "Congress of the United States" which of course is OUTSIDE of the constitutional Republic established by the several States in the Constitution of the United States.

The "UNITED STATES OF AMERICA" replaced the "UNITED STATES" after the Seventeenth Amendment was passed as the Real Party with Standing wherein the several States Legislatures no longer elected the "Senators of the

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Prospective Overruling, *109 U.Pa.L.Rev. 1* (1960). Thus, the dissent is saying, in effect, that *stare decisis* demands the preservation of methods of destroying *stare decisis* recently invented in violation of *stare decisis*.

United States" remembering that until 1913 the real party of interest of our Republic in the Courts the United States arising under Article III Section 2 in all Cases and Controversies exercising the judicial Power of the United States was only the "UNITED STATES." Lack of standing of the citizens of the several States as "citizens of the several States" to exercise their elective franchise, resulted in the Constitution of the United States with no "Senators of the United States" and the citizens of the several States being CON'ed by "voting" as a "citizen of the United States" instead of a "citizen of Mississippi" (citizens of the several States) resulted in the non-constitutional "States of the United States" in place of the several States. See Congressional Record of 1938, *infra*, on "citizen of the United States."

B. Federal Circuit is an Article III Section 2 Court of the United States and the 5th Circuit Isn't

As evidenced by **Attachment 7—Senate Report No. 96-304, 96th Congress, 1s6 Session of the Federal Courts Improvement Act of 1979 ("A8—Senate Report 1979")**, wherein the difference between the 5th Circuit and the new Federal Circuit is explained. The Federal Circuit is based upon "subject matter jurisdiction" versus than "geography"

From **A8—Senate Report 1979 pg. 8-10 excerpt,** which the Federal Circuit shall take judicial Notice thereof of all of **A8—Senate Report 1979**, to wit:

TITLE III-TRIAL AND APPELLATE STRUCTURE FOR GOVERNMENT

CLAIMS, PATENTS, AND OTHER MATTERS

Title III has three purposes: to fill a void in the judicial system by creating an appellate forum capable of **exercising nationwide jurisdiction over appeals in areas of the law where Congress determines there is a special need for nationwide uniformity;** * * *

Court of Appeals for the Federal Circuit—**The bill creates an article III court** that is **similar** in structure to the eleven other courts of appeals. * * *

The **Court of Appeals for the Federal Circuit differs from other Federal courts of appeals,** however, **in that its jurisdiction is defined in terms of subject matter rather than geography.** * * *

Contemporary observers **recognize that there are certain areas of Federal law in which the appellate system is malfunctioning.** **A decision in any one of the eleven regional circuits is not binding on any of the others.** As a result, **our Federal judicial system lacks the capacity, short of the Supreme Court, to provide reasonably quick and definitive answers to legal questions of nationwide significance.** * * *.

The creation of a new Court of Appeals for the Federal Circuit through a merger of the Court of Claims and the Court of Customs and Patent Appeals (COPA) addresses these structural problems. The Act provides a new forum for the definitive adjudication of selected categories of cases. At the same time, it improves the administration of the system by reducing the number of decision-making entities within the federal appellate system.

Testimony on S. 677 and S. 678 supported the premise that the capacity of the federal appellate courts to provide a nationwide answer to legal questions could be expanded through the establishment of new courts of appeals whose jurisdiction is defined on a topical rather than a geographical basis. The creation of the Court of Appeals for the Federal Circuit provides such a forum for appeals from throughout the country in areas of the law where Congress determines that there is special need for national uniformity. The absence of such a court in the present. Federal judicial system has compelled Congress from time to time in the past to create special courts to handle a narrow category of cases. Although the jurisdiction of the federal circuit is presently delineated in the manner outlined above, the **creation of a Federal appellate court with jurisdiction that is defined in terms of subject matter rather than territory provides an institutional structure which the**

> **Federal judicial system, as it is presently constituted, lacks.** The committee has determined that an adequate showing has been made for nationwide subject matter jurisdiction in the areas of patent and claims court appeals. It must be understood, however, that 1t is not the committee's judgment that broader subject matter jurisdiction is intended for this court. A proposal that would provide just such broader jurisdiction-a National Court of Appeals —has been expressly considered by the committee, and rejected. It must therefore be noted that any **additional subject matter, or geographic jurisdiction**, for the United States Court of Appeals for the Federal Circuit will require not only serious future evaluation, but new legislation

C. "citizen of the United States" Used Only by IRS and The Department of Justice and IRS DO NOT Use Words Defined with "MEANS."

Bringer and the IRS do not use the **term definitions—"means"** that require the exclusive use of "**term,**" wherein there are excess of eight hundred forty-nine (849) terms in Title 26.

In *Verbie v. Morgan Stanley Smith Barney, LLC*, 148 F.Supp.3d 644 (E.D.Tenn. 2015) "*See* 15 U.S.C. § 78u-6(a) (noting that the definition "shall apply" throughout the section); *see also Burgess v. United States*, 553 U.S. 124, 131 n. 3, (2008) (describing a **definition** that **uses** the term "**means**" as **exclusive** and a definition that uses that term "**includes**" as **nonexclusive**)." * * * @ 656 "This conclusion is fortified by the fact that when an **exclusive definition is intended the word 'means' is employed**". In *Burgess v. United States*, 553 U.S. 124, 131 n. 3 ""[T]he word '**includes**' is usually a term of enlargement, and not of limitation." 2A Singer § 47:7, p. 305 (some internal quotation marks omitted).

Thus "[a] term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning ... than where"—as in § 802(44)—"the definition declares what a term 'means.'" *Ibid.* See also *Groman v. Commissioner,* 302 U.S. 82, 86, (1937) "**[W]hen an exclusive definition is intended the word 'means' is employed**, ... whereas here the word used is 'includes."

a. "citizen of the United States" and "individual" by IRS.

The IRS in 26 CFR § 1.1-1[3] **Income tax on individuals**, to wit:

> (a) General rule. (1) Section 1[4] of the Code imposes an income tax on the income of **every individual** who is a **citizen or resident of the United States** and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. * * *
>
> (b) Citizens or residents of the United States liable to tax. In general, **all citizens of the United States**, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.

The defintion of the term "**individual**" "**means**" as used by IRS is found in 5 U.S.C. § 552a(a)(2)" the **term "individual" means a citizen of the United States** or **an alien** lawfully admitted for permanent **residence**." The IRS has no authority to "maintain" means (§ 552a(a)(3)), "record" means (§ 552a(a)(4)), a

[3] Forgetting that this the IRS has NO regulations that are "substantive regulations," *i.e.* "legislative rules" as held in *Chrysler v. Brown*, 441 U.S. 281 (1979) codified in 5 U.S.C. 553(b)(c)(d). Motion Word limits restrict briefing this out.

[4] 26 U.S.C. § 1—Tax Imposed.

"system of records" means (

The IRS has by coercion, threats, incarceration, loss of property being used against Kuyrkendall by the more "modern" version of the trilemma of England's notorious Star Chamber Courts of (1) attempting to force Kuyrkendall into self-incriminate himself (File a Form 1040 with his signature for a benefit[5]), (2) and do this under the penalty of perjury, and (3) then find Kuyrkendall in contempt, incarcerate him and take his property (using the unconstitutional USDC in S.D. Mississippi).

If Kuyrkendall has signed the Form 1040 OMB 1545-0074, which is an "implied-in-law"[6] contract this would preclude Kuyrkendall from filing a case in the United States Federal Court of Claims or into the Federal Circuit under 28

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[5] See

[6] *Skillo v. United States*, 68 Fed.Cl. 734, 742-743 (Fed.Ct.Cl. 2005) **[*742]** "The court agrees with defendant. Indeed, "the Court of Claims' jurisdiction with respect to contracts extends only to actual contracts, either express or implied in fact; **it does not reach claims on contracts implied in law.**" *Hatzlachh Supply Co. v. United States,* 444 U.S. 460, 465 n. 5, 100 S.Ct. 647, 62 L.Ed.2d 614 (1980) (citing, *inter alia, Alabama v. United States,* 282 U.S. 502, 507, 51 S.Ct. 225, 75 L.Ed. 492 (1931)). **"[T]o establish jurisdiction based on an implied contract, an appellant must establish the elements of a contract, including consideration, mutuality of consent, and definiteness of terms."** **[*743]** *Girling Health Sys., Inc. v. United States,* 949 F.2d 1145, 1147 (Fed.Cir.1991) **(rejecting a taxpayer's contention that the instructions to an IRS form constituted an implied contract between IRS and the taxpayer).** Moreover, **"[t]he requirements of mutuality of intent and the lack of ambiguity in offer and acceptance are the same for an implied-in-fact contract as for an express contract."** *Russell Corp. v. United States,* 210 Ct.Cl. 596, 537 F.2d 474, 482 (1976).

U.S.C. § 1491—Tucker Act.

Kuyrkendall has never volunteered to date and all actions Kuyrkendall have taken to date are under threat, duress and coercion concerning the IRS.

As evidenced in **Attachment 8—Congressional Record of January 13th, 1938 including the "[Senate. Views of the minority, No. 1956. 49th Cong., 2d sess.] In the Senate of the United States. February 25, 1887. Ordered to be printed," ("A8—1938 Cong. Rec.")** clearly articulates clearly the use of "citizen of the United States" is a **prohibition**; and, **not positive law or not original rights,** which had application only to prohibit the several States Laws and prohibit the several States public officers and employees clothed with authority one of the several States.

And further, unless some State action of the kind prohibited exists, the Power of Congress by and though a "citizen of United States" would sleep forever, having application to the Thirteenth, Fourteenth and Fifteenth Amendments.

The Federal Circuit shall take judicial Notice of **A8—1938 Cong. Rec, Pages 4-14 [431-442] "Senate. Views of the minority, No. 1956. 49th Cong., 2d sess.] In the Senate of the United States. February 25, 1887. Ordered to be printed." ("A8—Excerpt "Minority No. 1956")** with an excerpt from **Page 10 [438],** to wit;

The language of the **fourteenth amendment** is:

"No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property Without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And the **fifteenth amendment** ordains as follows:

"The right of the **citizens of the United** States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude."

It is now firmly settled that these provisions are directed solely against State laws and State action, through persons or agents clothed with State authority. It is also settled that the power conferred on Congress to enforce these provisions is a power only to enforce the prohibition against State action. That the rights conferred on persons under them are not positive, original rights, but the right only to exemption from, and protection against, the prohibited State action. And the power of Congress to interfere in any case is purely a power of correction, a power to give redress against a prohibited State action, that the exercise, the actual exercise of efficient power by Congress, under the amendments, presupposes State action of the kind prohibited; and until there be such prohibited State action, the power of Congress is wholly dormant, and without such action really being taken, somewhere or at some time, the power of Congress would sleep forever.

In no case under these amendments, so far as the present controversy is concerned, **can the power of Congress be made to reach, either for punishment or correction, or redress in any way, civil or criminal, the acts of private individuals. On this last point, the controversy was long between a sectional majority in Congress and the Constitution, but in the end the Constitution triumphed fully, completely.**

This was well settled as evidenced in **A8—Excerpt "Minority No. 1956** by the holdings of the Supreme Court of the United States citing:

(1) [Pg. 10] *United States v. Cruikshank et al,* 92 U.S. 542, 554-555 (1875); and, **(2)**

[Pg. 10] *Minor v. Happersett*, 88 U.S. 162 (1874); and,

(3) [Pg. 10] *United States v. Reese et al.*, 92 U.S. 214 (1875); and,

(4) [Pg. 10] *Strauder v. West Virginia*, 100 U.S. 303 (1879) [*abrogated by Taylor v. Louisiana,* 419 U.S. 522 (1975)) *on other issues*]; and,

(5) [Pg. 10] *Virginia v. Rives,* 100 U.S. 13 (1879); and,

(6) [Pg. 10] *Neal v. Delaware*, 103 U.S. 370 (1880); and,

(7) [Pg. 10] *United States v. Harris*, 106 U.S. 629 (1883).

b. Kuyrkendall's Political Status, Citizen Status and Allegiance

Kuyrkendall has filed into the Public Record that he is NOT a "citizen of the United States" as used by the IRS and Bringer, but Kuyrkendall is a "citizen of Mississippi" as evidenced by the Public Record **Attachment 9—Public Record Filed in Palmer, Alaska Recording District 311 With Number "2016-022716-0" Kuyrkendall's Political Status, Citizen Status and Allegiance ("A9—Status")** that this Federal Circuit shall take judicial Notice thereof and further this certified copy is self-authenticating under Federal Evidence Rule 901(7).

As evidenced by Kuyrkendall's voter registration in **Attachment 10—Kuyrkendall's Voter Registration in Mississippi Section III. Voter Declaration ("A10—Voter").**

c. The Elective Franchise IS Only For "citizens of the several States" And Not for a "citizen of the United States."

Kuyrkendall is a "citizens of Mississippi" and has his unalienable rights secured in the Constitution of Mississippi. **Kuyrkendall is NOT a "citizen of the United States"** under 14 Stat. 27 (1866) memorialized in the 14th Amendment that are using the "public rights" doctrine[7] with no "judicial determination" of issues concerning "taxpayers" with no remedies in any constitutional adversarial Court.

The question arises where is the right or privilege of the elective franchise arise under: The Constitution of the United States or the constitution of one of the several States, *i.e.*, being the Constitution of Mississippi? The answer is found in *United States v. Anthony*, 24 F.Cas. 829, 829, 830 (Cir.Ct. N.D.N.Y. 1873), to wit:

> The thirteenth, fourteenth and fifteenth amendments were designed mainly for the protection of the newly emancipated negroes, but full effect must, nevertheless, be given to the language employed.
>
> * * *
>
> The **right of voting,** or the privilege of voting, is a right or privilege **arising under the constitution of the state**, and not under the constitution of the United States; and second, that a right of the character here involved is not one connected with **citizenship of the United States**.
>
> * * *
>
> [I]f rights of a citizen are thereby violated, they are of that fundamental class, **derived from his position as a citizen of the state, and not those limited rights belonging to him as a citizen of the United States**; and such was the decision in *Corfield v. Coryell*, 6 F.Cas. 546, 551, 552 (1823).

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[7] *Kuretski v. C.I.R.*, 755 F.3d 929, 939-940 (D.C.Cir. 2014).

In *Kineen v. Wells*, 11 N.E. 916, 918, 919 (Sup.Jud.Ct.Mass. 1887), to wit:

> If the legislature can impose certain restrictions upon one class of voters, and exempt another, what is the limit to its discretion?
> * * *
> The **right or privilege of voting is a right or privilege arising under the constitution of each state**, and **not under the constitution of the United States.** The voter is entitled to vote in the election of officers of the United States by reason of the fact that he is a voter in the state in which he resides. He exercises this right because he is entitled to by the laws of the state where he offers to exercise it, and not because he is a citizen of the United States. *United States v. Anthony*, 24 F.Cas. 829, 830 (Cir.Ct. N.D.N.Y. 1873)

In *Corfield v. Coryell*, 6 F.Cas. 546, 551, 552 (1823), a case the Circuit Court of the United States [a bona fide Article III Court] has described the privileges and immunities of the citizens of the several States in great detail including this excerpt to which some additional protections under fourteenth Amendment were overlaid but the fundamental right of the elective franchise is still posited in the constitution of one of the several States, to wit:

> [M]ay be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges **deemed to be fundamental**: to which may be added, the **elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised.**

d. The Fourteenth Amendment Doesn't Apply To "citizens of the United States" in the District of Columbia or to the District of Columbia.

In *Neild v. District of Columbia*, 110 F.2d 246, 250 FN10 (1940) citing the holding of *Wright v. Davidson*, 181 US. 371, 384 (D.C. Cir. 1940), to wit:

> [H]olding the **Fourteenth Amendment inapplicable to the District of Columbia.** On the other hand, the rights and liberties protected by the bill of rights (Amendments I to VIII) against encroachment by the national government have been held applicable to the District although not to the states. Thus, the provisions of the Fourth Amendment are not applicable to the states (*National Safe Deposit Co. v. Stead,* 232 U.S. 58, 34 S.Ct. 209, 58 L.Ed. 504; *Ohio ex rel. Lloyd v. Dollison,* 194 U.S. 445, 24 S.Ct. 703, 48 L.Ed. 1062), although they are to the District. *United States v. Mattingly*, 52 App.D.C. 188, 285 F. 922

A "citizen of the United States" in the District of Columbia's Statutes is a "qualified elector" as found in DC ST § 1-1001.02 (2) "The term "**qualified elector**" means a person who . . . (B) is a **citizen of the United States.**" A "citizen of the United States" outside of the District of Columbia under the Fourteenth Amendment is a fiction in law—"All of this is a fiction in law[8]" and has the same rights a "corporation, which is included in the Fourteenth Amendment definition of "person" as found in *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936) and *First National Bank of Boston v. Bellotti*, 436 U.S. 765, 780 FN15 (1978). Also, this "citizen of the United States" in 14 Stat. 27 (1866) codified today in 42 U.S.C. §§§ 1981, 1982 and 1988 that has the same rights as a "white citizen" is memorialized in the 14th Amendment.

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[8] *McDonald v. City of Chicago*, 130 S.C. 3020, 3062 (2010).

e. The Fifteenth Amendment Does not Confer any Right of Suffrage on Anyone.

The holding in the Supreme Court of the United States holds that the 15th Amendment does not confer any Right of Suffrage on anyone *Le Grand v. United States*, 12 F. 577, 578, 579 (Cir.Ct. E.D.Tx. 1882) in opposition to AG Green's denial, to wit:

> The fifteenth amendment can have no application. That amendment relates to the right of citizens of the United States to vote. It does not confer the right of suffrage on any one. It merely invests citizens of the United States with the constitutional right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. *U.S. v. Reese*, 92 U.S. 214 (1875); *United States v. Reese*, 92 U.S. 214 (1875); S.C. 1 Woods, 322 (Cir.Ct. D. La. 1874) affirmed in *United States. v. Cruikshank*, 92 U.S. 542 (1875).

III. Kuyrkendall Has Standing To Appeal in the Federal Circuit Based Upon "Ties of Natural Justice."

The IRS has refused to date to extablish the source of the "obligation[9]" for the alleged debt. The IRS will not divulge the "obligation" that allegedly creates the a debt, which requires a "contract."

Kuyrkandall's only remedy is to Appeal into the Article III Section 2 Federal Circuit under 28 U.S.C. 1491—Tucker Act under the well settled issue that has Kuyrkendall has not "volunteer"[ed] therein if Kuyrendall is under an obligation implies a debt and give this action founded in equity as if it were a "contract" satisfacting the requirements of 28 U.S.C. § 1491 "upon any express or implied [implied-in-fact] contract with the United States."

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[9] *Jarvis v. United States*, 43 Fed.Ct. 529, 534 (Fed.Ct.Cl. 1999) "In substance, what that **obligation means** is that each party will cooperate in performance of the contract and will do nothing to hinder the other party's performance or expectations." See also *Ingham Regional Medical Center v. United States*, 126 Fed.Cl. 1, 45 (2016) "However, as both parties recognize, "[i]t is well settled that the parties' duty of good faith and fair dealing must be rooted in promises set forth **in the contract**." *Helix Elec., Inc. v. United States,* 68 Fed.Cl. 571, 587 (2005). Thus, "[t]he implied duty of good faith and fair dealing cannot expand a party's contractual duties beyond those in the express *45 contract or create duties inconsistent with the contract's provisions." *Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 831 (Fed. Cir. 2010) (citing *Centex Corp. v. United States*, 395 F.3d 1283, 1304–06 (Fed. Cir. 2005)); *Jarvis v. United States*, 43 Fed.Cl. 529, 534 (1999) ("The implied duty of good faith and fair dealing does not form the basis for wholly new contract terms, particularly terms which would be inconsistent with the express terms of the agreement.")"

Kuyrkendall is relying upon *Pittman & sons, Inc. v. The United States*, 161 Ct.Cl. 701, 704-705 (Fed.Ct.Cl. 1963)[10], to wit:

> **[704]** At the outset, we are faced with a technical dichotomy between contracts **implied in fact** and contracts **implied in law**. It has been said that this court has no jurisdiction to render judgment in the latter. **FN4.** Under the traditional conception, **[705]** a **contract implied in fact is a real contract** in the usual sense, although there may have been no actual worded 'agreement.' It is drawn out by the trier of fact when the circumstances warrant him to conclude **particularly from the conduct of the parties**) that **there exists the legal equivalent of mutual consent. In other words, a contract implied in fact is a promise implied by the law. By way of contrast, a contract implied in law is an obligation imposed by the law.** As stated by Lord Mansfield:
>
> '**If the defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action founded in the equity of the plaintiff's case, as it were upon a contract**.' (*Moses v. Macferlan*, 2 Burr. 1005, 97 Eng.Rep. 676 (K.B. 1760).)
>
> The '**ties of natural justice**' of which he spoke do not, however, impose an obligation for the protection of a **mere volunteer.**[5] **As Lord Mansfield saw it, a contract implied in law is neither contract nor tort, but a third category entirely different in nature.**

IV. The United States District Court Does not Arise Under Article III § 2

As evidenced by **Attachment 11—Jurisdiction of the USDC ("A11—USDC")** does not arise under Article III Section 2 but as codified in 28 U.S.C. § 132 from the 1940 Title 48—Territories Sec. 641 and specifically 28 U.S.C. § 132

[10] The Federal Court of Claims was a bona fide Article III Court of the United States in 1963.

(c) from the "Territory of Hawaii" . . . "merely recognizes established practice." The "judicial Power of a district court" § 132(c) does NOT equate to the "judicial Power of the United States in Article III § 2 therein is Kuyrkendall irrefutable evidence that the USDC did not have "Subject Matter" or "Personal Jurisidiction" of Kuyrkendall arising under Article III Section 2.

V. Conclusion.

Therefore, the Federal Court has jurisdiction under the "ties of natural justice" as the IRS claims an "obligation" of a debt from Kuyrkendall *flows a fortiori* that an "implied-in-fact" or an "express contract" exists granting the Federal Court Jurisdiction.

The Federal Court should deny the Transfer of this instant appeal the 5th Circuit, set an "Formal Briefing" Schedule. A transfer to the 5th Circuit would be a denial of "Due Process of Law" arising under the Constitution of the United States and the Constitution of Louisianna.

Also as the "citizen of the United States" is the sole "entity" for the IRS, Kuyrkendall if granted extensively his researched on this issue, Kuyrkendall would be willingly to submit and amend this Opposition if the Federal Court so chose.

My Hand

Wiley R. Kuyrkendall

VI. Certification

This Opposition contains 5,114 words in Time New Roman in a 14 Font.

VII. VerifiedAffidavit.

State of Mississippi)
) **ss.**
Rankin County)

I, **Wiley Randolph Kuyrkendall,** do hereby swear (or affirm) that all of the facts in this Opposition, the Attachments and this Verified Affidavit are true and correct under the penalties of Perjury.

1. My true name is Wiley Randolph Kuyrkendall.

2. I am of the age of majority and competent to testify to the facts in this Opposition and Verified Affidavit.

3. I have never volunteered in my dealings with the IRS to date.

4. All dealings with the IRS have been under threat, duress and coercion.

5. I am NOT a "citizen of the United States" as used by the IRS and USDC.

6. The IRS and the USDC has refused to recognize my current status as a "citizen of Mississippi" domiciled in Mississippi.

7. The IRS and USDC have refused to disclose the "obligation" that establishes any debt due and owing.

8. The Federal Circuit is the only hope that Kuyrkendall has to obtain "due process of law" arising Article III Section 2 according to my experience and research.

9. The USDC and 5th Circuit do not have "subject matter" and "personal jurisdiction" arising under Article III Section 2 according to my experience and research.

My Hand,

Wiley R. Kuyrkendall

Sworn and subscribed before a Notary Public in and for the State of Mississippi on the date of March 29, 2017

My Commission expires on 1-16-2021.

Winnie D. Browman

Signature of Notary Public

STATE OF MISSISSIPPI
WINNIE D. BROWMAN
ID No 61822
NOTARY PUBLIC
Comm Expires
January 16, 2021
RANKIN COUNTY

[SEAL]

VIII. Certificate of Service:

I certify that this Motion was mailed Prepaid via

USPA or UPS to the following Parties, to wit:

Clerk of Court
Federal Circuit Court of Appeals
717 Madison Place, N.W.
Washington, D.C. 20439

Norah E. Bringer
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Tax Division, Appellate Section
950 Pennsylvania Avenue NW.
Washington, D.C. 20530
norah.e.bringer@usdoj.gov
202-307-6224 Phone

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norah.e.bringer@usdoj.gov
202-307-6224 Phone
202-514-8456 Fax

Date: 3/29/17

Signature

CLOSED,FKB,TRIAL_SET

U.S. District Court
Southern District of Mississippi (Northern (Jackson))
CIVIL DOCKET FOR CASE #: 3:14-cv-00751-CWR-FKB

United States of America v. Kuyrkendall et al
Assigned to: District Judge Carlton W. Reeves
Referred to: Magistrate Judge F. Keith Ball
Case in other court: Fifth Circuit, 17-60031
Cause: 26:7403 Suit to Enforce Federal Tax Lien

Date Filed: 09/25/2014
Date Terminated: 11/21/2016
Jury Demand: Defendant
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America represented by **Robert E. Dozier-Federal Gov**
U. S. DEPARTMENT OF JUSTICE - Tax Division
555 Fourth Street, N. W., Room 6211
Washington, DC 22101
202/514-6073
Fax: 202/514-9868
Email: robert.e.dozier@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Wiley R. Kuyrkendall represented by **Wiley R. Kuyrkendall**
200 Grandview Court
Pearl, MS 39208
601-965-9552
PRO SE

Wayne E. Ferrell , Jr.
WAYNE E. FERRELL, JR., ATTORNEY
P. O. Box 24448

Jackson, MS 39225-4448
601/969-4700
Fax: 601/969-7514
Email:
wferrell@airlawonline.com
TERMINATED: 12/09/2014
ATTORNEY TO BE NOTICED

Defendant

Greenbriar Holdings

Defendant

Glacier Systems

Defendant

Chris Irby	represented by	**Bailey R. Fair** WATKINS & EAGER, PLLC P. O. Box 650 400 East Capitol Street (39201) Jackson, MS 39205-0650 601/965-1944 Fax: 601/965-1901 Email: bfair@watkinseager.com *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

Chris Irby Insurance Agency, Inc.	represented by	**Bailey R. Fair** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

Teresa L. Hathorn
formerly known as
Teresa A. Kuyrkendall

Defendant

Teresa J. McCann
TERMINATED: 08/03/2016
formerly known as
Teresa J. Kuyrkendall
TERMINATED: 08/03/2016

Defendant

Judy Fortenberry *Tax Collector of Rankin County, Mississippi*	represented by	**Craig Lawson Slay-County Gov** RANKIN COUNTY BOARD OF SUPERVISORS 211 East Government St., Suite A Brandon, MS 39042 601/825-1475 Email: cslay@rankincounty.org *ATTORNEY TO BE NOTICED*

Defendant

Mississippi Department of Employment Security	represented by	**Paul H. Kimble-State Gov** MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY P. O. Box 1699 Jackson, MS 39215-1699 601/321-6499 Fax: 601/321-6532 Email: pkimble@mdes.ms.gov *ATTORNEY TO BE NOTICED*

Defendant

Mississippi Department of Revenue	represented by	**John S. Stringer-State Gov** MISSISSIPPI DEPARTMENT OF REVENUE P. O. Box 22828 Jackson, MS 39225-2828 601/923-7410 Fax: 601/923-7423 Email: john.stringer@dor.ms.gov *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/25/2014	1	COMPLAINT against Chris Irby Insurance Agency, Inc., Judy Fortenberry, Glacier Systems, Greenbriar Holdings, Teresa L.

		Hathorn, Chris Irby, Wiley R. Kuyrkendall, Teresa J. McCann, Mississippi Department of Employment Security, Mississippi Department of Revenue, filed by United States of America. (Attachments: # 1 Exhibit 1 - Notice and Judgment, # 2 Exhibit 2 - Notice and Judgment, # 3 Exhibit 3 - Witnessed Affidavit and Notice of Managing Director's Powers of Greenbriar Holdings, # 4 Exhibit 4 - Witnessed Affidavit and Notice of Managing Director's Powers of Glacier Systems, # 5 Civil Cover Sheet, # 6 Cover Letter)(cwl) Modified on 10/14/2014 (cwl). (Entered: 09/25/2014)
10/14/2014	2	Summons Issued as to Chris Irby Insurance Agency, Inc., Judy Fortenberry, Glacier Systems, Greenbriar Holdings, Teresa L. Hathorn, Chris Irby, Wiley R. Kuyrkendall, Teresa J. McCann, Mississippi Department of Employment Security, Mississippi Department of Revenue. (cwl) (Entered: 10/14/2014)
10/15/2014	3	AMENDED COMPLAINT *of the United States* against All Defendants, filed by United States of America. (Attachments: # 1 Exhibit 1 (Criminal Judgment Lien), # 2 Exhibit 2 (Criminal Judgment Lien), # 3 Exhibit 3 (Greenbriar Holdings Affidavit), # 4 Exhibit 4 (Glacier Systems Affidavit))(Dozier, Robert) (Entered: 10/15/2014)
11/07/2014	4	MOTION for Extension of Time to File Answer by Wiley R. Kuyrkendall (Ferrell, Wayne) (Entered: 11/07/2014)
11/07/2014		TEXT ONLY ORDER granting 4 Motion for Extension of Time to Answer. Wiley R. Kuyrkendall answer due 12/15/2014. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by Magistrate Judge F. Keith Ball on 11/7/14. (WS) (Entered: 11/07/2014)
11/10/2014	5	ANSWER to 3 Amended Complaint, by Judy Fortenberry.(Slay - County Gov, Craig) (Entered: 11/10/2014)
11/12/2014	6	NOTICE of Appearance by Bailey R. Fair on behalf of Chris Irby (Fair, Bailey) (Entered: 11/12/2014)
11/12/2014	7	NOTICE of Appearance by Bailey R. Fair on behalf of Chris Irby Insurance Agency, Inc. (Fair, Bailey) (Entered: 11/12/2014)
11/12/2014	8	MOTION for Extension of Time to File Answer re 3 Amended Complaint, by Chris Irby (Fair, Bailey) (Entered: 11/12/2014)
11/12/2014	9	MOTION for Extension of Time to File Answer re 3 Amended Complaint, by Chris Irby Insurance Agency, Inc. (Fair, Bailey)

		(Entered: 11/12/2014)
11/12/2014		TEXT ONLY ORDER granting 8 and 9 -- Motions for Extension of Time to Answer. Chris Irby answer due 12/5/2014; Chris Irby Insurance Agency, Inc. answer due 12/5/2014. NO FURTHER WRITTEN ORDER WILL ISSUE FROM THE COURT. Signed by Magistrate Judge F. Keith Ball on 11/12/14. (WS) (Entered: 11/12/2014)
11/21/2014	10	Rule 16(a) Initial Order Telephonic Case Management Conference set for 2/19/2015 02:30 PM before Magistrate Judge F. Keith Ball. No later than seven (7) days prior to the TCMC, a confidential memorandum AND a proposed Case Management Order shall be submitted via e-mail to ball_chambers@mssd.uscourts.gov. The plaintiffs counsel shall set up the conference and contact the Court at 601-608-4460. (JEJ) (Entered: 11/21/2014)
11/24/2014	11	ANSWER to 3 Amended Complaint, by Mississippi Department of Revenue.(Stringer - State Gov, John) (Entered: 11/24/2014)
11/24/2014	12	ANSWER to 3 Amended Complaint, by Mississippi Department of Employment Security.(Kimble - State Gov, Paul) (Entered: 11/24/2014)
11/25/2014	13	SUMMONS Returned Executed by United States of America Wiley R. Kuyrkendall served on 10/23/2014, answer due 12/15/2014. (Dozier, Robert) (Entered: 11/25/2014)
11/25/2014	14	SUMMONS Returned Executed by United States of America Chris Irby served on 10/24/2014, answer due 12/5/2014. (Dozier, Robert) (Entered: 11/25/2014)
11/25/2014	15	SUMMONS Returned Executed by United States of America Teresa L. Hathorn served on 11/10/2014, answer due 12/1/2014. (Dozier, Robert) (Entered: 11/25/2014)
11/25/2014	16	SUMMONS Returned Executed by United States of America Judy Fortenberry served on 10/24/2014, answer due 11/14/2014. (Dozier, Robert) (Entered: 11/25/2014)
11/25/2014	17	SUMMONS Returned Executed by United States of America Mississippi Department of Revenue served on 10/22/2014, answer due 11/12/2014. (Dozier, Robert) (Entered: 11/25/2014)
11/25/2014	18	SUMMONS Returned Executed by United States of America Mississippi Department of Employment Security served on

		10/22/2014, answer due 11/12/2014. (Dozier, Robert) (Entered: 11/25/2014)
12/01/2014	19	MOTION to Withdraw as Attorney by Wiley R. Kuyrkendall (Ferrell, Wayne) (Entered: 12/01/2014)
12/05/2014	20	ANSWER to 3 Amended Complaint, by Chris Irby Insurance Agency, Inc..(Fair, Bailey) (Entered: 12/05/2014)
12/05/2014	21	ANSWER to 3 Amended Complaint, by Chris Irby.(Fair, Bailey) (Entered: 12/05/2014)
12/09/2014	22	NOTICE Quit Claiming of the Two Properties by Wiley R. Kuyrkendall (Attachments: # 1 Exhibit A, # 2 Exhibit B)(cwl) (Entered: 12/09/2014)
12/09/2014		TEXT ONLY ORDER granting 19 Motion to Withdraw as Attorney. Attorney Wayne E. Ferrell, Jr terminated. Should no counsel appear on Defendant Kuyrkendall's behalf by January 9, 2015, the Court will assume that Defendant Kuyrkendall is proceeding pro se, without counsel. NO FURTHER WRITTEN ORDER WILL ISSUE. Signed by Magistrate Judge F. Keith Ball on 12/9/14 (Copy of Text Only Order mailed to Kuyrkendall's address as listed on 19 Certificate of Service.) (YWJ) (Entered: 12/09/2014)
12/15/2014	23	ANSWER to 3 Amended Complaint, by Wiley R. Kuyrkendall.(cwl) (Entered: 12/15/2014)
01/23/2015	24	SUMMONS Returned Executed by United States of America Chris Irby Insurance Agency, Inc. served on 10/24/2014, answer due 12/5/2014. (Dozier, Robert) (Entered: 01/23/2015)
01/23/2015	25	Summons Returned Unexecuted by United States of America as to Teresa J. McCann. (Dozier, Robert) (Entered: 01/23/2015)
01/23/2015	26	MOTION for Extension of Time to Serve Process *on (1) Teresal J. McCann (2) Greenbriar Holdings and (3) Glacier Systems* by United States of America (Attachments: # 1 Exhibit 1 (Declaration of Robert E. Dozier))(Dozier, Robert) (Entered: 01/23/2015)
01/23/2015	27	MEMORANDUM in Support re 26 MOTION for Extension of Time to Serve Process *on (1) Teresal J. McCann (2) Greenbriar Holdings and (3) Glacier Systems* filed by United States of America (Dozier, Robert) (Entered: 01/23/2015)

01/26/2015	28	ORDER granting 26 Motion for Extension of Time to Serve Process. Signed by Magistrate Judge F. Keith Ball on 1/26/15. (YWJ) (Entered: 01/26/2015)
02/19/2015		Minute Entry for proceedings held before Magistrate Judge F. Keith Ball: Telephonic Case Management Conference held on 2/19/2015 in Jackson, MS. Appearing: Robert Dozier, Wiley Kuyrkendall, Bailey Fair, Craig Slay, Paul Kimble and John Stringer. (JEJ) (Entered: 03/09/2015)
03/06/2015	29	NOTICE of Service of *Federal Rule of Civil Procedure 25(a)(1)* Disclosure by Mississippi Department of Revenue (Stringer - State Gov, John) (Entered: 03/06/2015)
03/06/2015	30	NOTICE of Service of *Rule 26(a)(1) Initial* Disclosure by Chris Irby (Fair, Bailey) (Entered: 03/06/2015)
03/06/2015	31	NOTICE of Service of *Rule 26(a)(1) Initial* Disclosure by Chris Irby Insurance Agency, Inc. (Fair, Bailey) (Entered: 03/06/2015)
03/09/2015	32	CASE MANAGEMENT ORDER. Motions for Amended Pleadings due by 3/23/2015; Motions for Joinder of Parties due by 3/23/2015; Designate Experts Plaintiff Deadline due by 7/22/2015; Designate Experts for Defendant Deadline due by 8/21/2015; Discovery due by 10/21/2015; Motions due by 11/4/2015; Pretrial Conference set for 3/11/2016, time to be determined, in Courtroom 5B (Jackson) Reeves before District Judge Carlton W. Reeves; Jury Trial set for a two-week term of court commencing 4/4/2016 09:00 AM in Courtroom 5B (Jackson) Reeves before District Judge Carlton W. Reeves; Settlement Conference set for 10/1/2015 09:00 AM before Magistrate Judge F. Keith Ball. Seven (7) days before the settlement conference, the parties must submit via e-mail to ball_chambers@mssd.uscourts.gov an updated CONFIDENTIAL SETTLEMENT MEMORANDUM. All parties are required to be present at the conference unless excused by the Court. If a party believes the scheduled settlement conference would not be productive and should be cancelled, the party is directed to inform the Court via e-mail of the grounds for their belief at least seven (7) days prior to the conference. Signed by Magistrate Judge F. Keith Ball on 3/9/15. (JEJ) (Entered: 03/09/2015)
03/12/2015	33	NOTICE of Service of *Initial* Disclosure by Judy Fortenberry (Slay - County Gov, Craig) (Entered: 03/12/2015)

03/24/2015	34	MOTION for Extension of Time to Serve Process *On or Obtain Dismissals of (1) Teresa J. McCann (2) Greenbriar Holdings and (3) Glacier Systems* by United States of America (Dozier, Robert) (Entered: 03/24/2015)
03/24/2015	35	MEMORANDUM in Support re 34 MOTION for Extension of Time to Serve Process *On or Obtain Dismissals of (1) Teresa J. McCann (2) Greenbriar Holdings and (3) Glacier Systems* filed by United States of America (Dozier, Robert) (Entered: 03/24/2015)
03/27/2015	36	ORDER granting 34 Motion for Extension of Time to Serve Process. Signed by Magistrate Judge F. Keith Ball on 3/27/15. (WS) (Entered: 03/27/2015)
04/02/2015	37	Pre-Discovery Disclosure by Wiley R. Kuyrkendall (cwl) (Entered: 04/02/2015)
06/15/2015	38	STIPULATION of Dismissal as to Glacier Systems and Greenbriar Holdings by Wiley R. Kuyrkendall (cwl) Modified on 6/15/2015 (cwl). (Entered: 06/15/2015)
09/23/2015		TEXT-ONLY ORDER cancelling settlement conference set for October 1, 2015. No further written order shall issue from the Court. Signed by Magistrate Judge F. Keith Ball on 9/23/2015. (JEJ) (Entered: 09/23/2015)
10/28/2015	39	MOTION for Entry of Default *as to Teresa L. Hathorn (Fomerly Teresa A. Kuyrkendall)* by United States of America (Attachments: # 1 Exhibit A (Declaration of Robert E. Dozier)) (Dozier, Robert) (Entered: 10/28/2015)
10/29/2015	40	Clerk's ENTRY OF DEFAULT as to Teresa L. Hathorn. (cwl) (Entered: 10/29/2015)
10/29/2015	41	SERVICE by Publication filed by United States of America. Last publication date 5/22/2015. (Dozier, Robert) (Entered: 10/29/2015)
10/29/2015	42	MOTION for Entry of Default *as to Teresa J. McCann* by United States of America (Attachments: # 1 Exhibit 1 (Declaration of Robert E. Dozier))(Dozier, Robert) (Entered: 10/29/2015)
10/29/2015	43	Clerk's ENTRY OF DEFAULT as to Teresa J. McCann (cwl) (Entered: 10/29/2015)
11/04/2015	44	MOTION for Summary Judgment *of the United States of America* by United States of America (Attachments: # 1 Exhibit 1

		(Declaration of IRS Advisor Katherine F. Young), # 2 Exhibit 2-1 (Compressed Transcript of Deposition of Wiley R. Kuyrkendall -- October 21, 2015), # 3 Exhibit 2-2 (Exhibits 1-10 to Deposition), # 4 Exhibit 2-3 (Exhibits 11-29 to Deposition), # 5 Exhibit 2-4(Exhibits 30-40 to Deposition), # 6 Exhibit 3 (IRS Form 4340 -2001 Tax Year), # 7 Exhibit 4 (IRS Form 4340-2002 Tax Year), # 8 Exhibit 5 (IRS Account Transcript -2001), # 9 Exhibit 6 (IRS Account Transcript 2002), # 10 Exhibit 7-1, # 11 Exhibit 7-2, # 12 Exhibit 7-3, # 13 Exhibit 7-4, # 14 Exhibit 7-5, # 15 Exhibit 7-6, # 16 Exhibit 7-7, # 17 Exhibit 7-8, # 18 Exhibit 7-9, # 19 Exhibit 7-10, # 20 Exhibit 7-11, # 21 Exhibit 7-12, # 22 Exhibit 8-1, # 23 Exhibit 8-2, # 24 Exhibit 8-3, # 25 Exhibit 8-4, # 26 Exhibit 8-5, # 27 Exhibit 8-6, # 28 Exhibit 8-7, # 29 Exhibit 9)(Dozier, Robert) (Entered: 11/04/2015)
11/04/2015	45	MEMORANDUM in Support re 44 MOTION for Summary Judgment *of the United States of America* filed by United States of America (Dozier, Robert) (Entered: 11/04/2015)
11/04/2015	46	MOTION for Default Judgment as to *Teresa L. Hathorn and Teresa J. McCann* by United States of America (Dozier, Robert) (Entered: 11/04/2015)
11/04/2015	47	MEMORANDUM in Support re 46 MOTION for Default Judgment as to *Teresa L. Hathorn and Teresa J. McCann* filed by United States of America (Dozier, Robert) (Entered: 11/04/2015)
11/04/2015	48	MOTION to Dismiss by Wiley R. Kuyrkendall (MGB) (Entered: 11/05/2015)
11/04/2015	49	MEMORANDUM in Support re 48 MOTION to Dismiss filed by Wiley R. Kuyrkendall (MGB) (Entered: 11/05/2015)
11/11/2015	50	RESPONSE to Motion re 44 MOTION for Summary Judgment *of the United States of America* filed by Chris Irby Insurance Agency, Inc. (Fair, Bailey) (Entered: 11/11/2015)
11/11/2015	51	MEMORANDUM IN SUPPORT re 50 Response to Motion, re 44 MOTION for Summary Judgment filed by Chris Irby Insurance Agency, Inc. (Fair, Bailey) (Entered: 11/11/2015)
11/23/2015	52	RESPONSE in Opposition re 48 MOTION to Dismiss *by Wiley R. Kuyrkendall* filed by United States of America (Attachments: # 1 Exhibit 1 (Declaration of Robert E. Dozier))(Dozier, Robert) (Entered: 11/23/2015)

11/23/2015	53	MEMORANDUM IN SUPPORT re 52 Response in Opposition to Motion, 48 Motion *to Dismiss by Wiley R. Kuyrkendall* filed by United States of America (Dozier, Robert) (Entered: 11/23/2015)
11/24/2015	54	Response in Opposition re 44 MOTION for Summary Judgment *of the United States of America* by United States of America (Attachments: # 1 Exhibit 1 (Declaration of IRS Advisor Katherine F. Young), # 2 Exhibit 2-1 (Compressed Transcript of Deposition of Wiley R. Kuyrkendall -- October 21, 2015), # 3 Exhibit 2-2 (Exhibits 1-10 to Deposition), # 4 Exhibit 2-3 (Exhibits 11-29 to Deposition), # 5 Exhibit 2-4(Exhibits 30-40 to Deposition), # 6 Exhibit 3 (IRS Form 4340 -2001 Tax Year), # 7 Exhibit 4 (IRS Form 4340-2002 Tax Year), # 8 Exhibit 5 (IRS Account Transcript -2001), # 9 Exhibit 6 (IRS Account Transcript 2002), # 10 Exhibit 7-1, # 11 Exhibit 7-2, # 12 Exhibit 7-3, # 13 Exhibit 7-4, # 14 Exhibit 7-5, # 15 Exhibit 7-6, # 16 Exhibit 7-7, # 17 Exhibit 7-8, # 18 Exhibit 7-9, # 19 Exhibit 7-10, # 20 Exhibit 7-11, # 21 Exhibit 7-12, # 22 Exhibit 8-1, # 23 Exhibit 8-2, # 24 Exhibit 8-3, # 25 Exhibit 8-4, # 26 Exhibit 8-5, # 27 Exhibit 8-6, # 28 Exhibit 8-7, # 29 Exhibit 9)(Dozier, Robert) filed by Wiley R. Kuyrkendall (cwl) (Entered: 11/25/2015)
11/25/2015	55	Judicial NOTICE of the Laws of the United States, the Constitution of the United States, Stare Decisis, Precedents and Holdings of the Constitutional Courts Arising Under Article III by Wiley R. Kuyrkendall. (cwl) (Entered: 11/25/2015)
11/25/2015	56	Judicial NOTICE of the Internal Revenue Laws Codified in Title 26 of the United States Code by Wiley R. Kuyrkendall. (cwl) (Entered: 11/25/2015)
11/25/2015	57	STIPULATION re 46 MOTION for Default Judgment as to *Teresa L. Hathorn and Teresa J. McCann Comprising Stipulation Between the United States of America and Teresa L. Hathorn Confirming Hathorn Has No Claims to Parcel 1 and Parcel 2* by United States of America (Dozier, Robert) (Entered: 11/25/2015)
12/04/2015	58	Rebuttal re 54 Response in Opposition,,,, *to Motion for Summary Judgment of the United States of America* filed by United States of America (Dozier, Robert) (Entered: 12/04/2015)
12/21/2015	59	MOTION to Withdraw 46 MOTION for Default Judgment as to *Teresa L. Hathorn and Teresa J. McCann* by United States of America (Dozier, Robert) (Entered: 12/21/2015)

12/21/2015	60	MEMORANDUM in Support re 59 MOTION to Withdraw 46 MOTION for Default Judgment as to *Teresa L. Hathorn and Teresa J. McCann* filed by United States of America (Dozier, Robert) (Entered: 12/21/2015)
12/23/2015	61	ORDER granting 59 United States' Motion to Withdraw Motion for Entry of Default Judgment as to Teresa L. Hathorn. Signed by District Judge Carlton W. Reeves on 12/23/2015. (EJ) (Entered: 12/23/2015)
02/24/2016		TEXT-ONLY ORDER postponing the Pretrial Conference pending a ruling on the pending Motion for Summary Judgment and Motion to Dismiss. Counsel are not required to forward a Proposed Pretrial Order until further notice from this Court. NO FURTHER WRITTEN ORDER SHALL BE ISSUED. Signed by District Judge Carlton W. Reeves on 2/24/2016. (JS) (Entered: 02/24/2016)
03/21/2016		TEXT-ONLY ORDER continuing the current trial date pending a ruling on the Motion for Summary Judgment and Motion to Dismiss. The Court will reset the trial date based on the parties' availability, if necessary. (Copy of NEF mailed to defendant at address listed on docket sheet.) NO FURTHER WRITTEN ORDER SHALL ISSUE. Signed by District Judge Carlton W. Reeves on 3/21/2016.(EJ) (Entered: 03/21/2016)
08/03/2016	62	ORDER granting 46 Motion for Default Judgment Signed by District Judge Carlton W. Reeves on 8/3/16 (MGB) (Entered: 08/03/2016)
08/03/2016	63	FINAL JUDGMENT in favor of United States of America against Teresa J. McCann. Default Judgment is entered in favor of the plaintiff and any rights and claims to the property at issue are extinguished. Signed by District Judge Carlton W. Reeves on 8/3/16 (MGB) (Entered: 08/03/2016)
10/19/2016	64	ORDER granting 44 Motion for Summary Judgment; denying 48 Motion to Dismiss. Signed by District Judge Carlton W. Reeves on 10/19/2016 (cwl) (Entered: 10/19/2016)
11/02/2016		*ORE TENUS* MOTION for Extension of Time to submit a proposed Decree of Foreclosure and Order of Sale and a proposed Final Judgment on or before 11/04/16 by United States of America. (N.M.) (Entered: 11/02/2016)

11/02/2016		TEXT-ONLY ORDER granting *ore tenus* Motion for Extension of Time to submit a proposed Decree of Foreclosure and Order of Sale and a proposed Final Judgment by United States of America. Documents are due on 11/07/16. NO FURTHER WRITTEN ORDER SHALL ISSUE. Signed by District Judge Carlton W. Reeves on 11/02/16. (N.M.) (Entered: 11/02/2016)
11/08/2016		TEXT-ONLY ORDER acknowledging receipt of proposed Final Judgment and proposed Decree of Foreclosure and Order of Sale submitted by the United States. (Copy of documents and NEF mailed to Defendant Wiley R. Kuyrkendall at the address reflected on the docket sheet.) Defendant must file any objections to entry of the proposed judgment and order on or before 11/18/2016. NO FURTHER WRITTEN ORDER SHALL ISSUE. Signed by District Judge Carlton W. Reeves on 11/08/16. (N.M.) (Entered: 11/08/2016)
11/18/2016	65	Response in Opposition re TEXT-ONLY ORDER acknowledging receipt of proposed Final Judgment and proposed Decree of Foreclosure and Order of Sale submitted by the United States. (Copy of documents and NEF mailed to Defendant Wiley R. Kuyrkendall at the address reflected on the docket sheet.) Defendant must file any objections to entry of the proposed judgment and order on or before 11/18/2016. NO FURTHER WRITTEN ORDER SHALL ISSUE. Signed by District Judge Carlton W. Reeves on 11/08/16. (N.M.) filed by Wiley R. Kuyrkendall (cwl) (Entered: 11/18/2016)
11/18/2016	66	MEMORANDUM IN SUPPORT re 65 Response in Opposition to Proposed Judgment and ORder of Judge Reeves. filed by Wiley R. Kuyrkendall (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(cwl) (Entered: 11/18/2016)
11/21/2016	67	ORDER on defendant's Objections to Proposed Final Judgment. Signed by District Judge Carlton W. Reeves on 11/21/2016 (cwl) (Entered: 11/21/2016)
11/21/2016	68	FINAL JUDGMENT entered. Signed by District Judge Carlton W. Reeves on 11/21/2016 (cwl) (Entered: 11/21/2016)
11/21/2016	69	DECREE of Foreclosure and Order of Sale as to Parcel 2. Signed by District Judge Carlton W. Reeves on 11/21/2016 (cwl) (Entered: 11/21/2016)
01/19/2017	70	NOTICE OF APPEAL as to 69 Decree of Foreclosure, 68 Judgment by Wiley R. Kuyrkendall. Filing fee $ 505, receipt

		number 34643043080. (cwl) (Entered: 01/19/2017)
01/19/2017		DOCKET ANNOTATION as to # 70 : Transcript Order Form mailed to Wiley R. Kuyrkendall. 200 Grandview Court, Pearl, MS 39208. (cwl) (Entered: 01/19/2017)
01/25/2017		USCA Case Number 17-60031 for 70 Notice of Appeal filed by Wiley R. Kuyrkendall. (cwl) (Entered: 01/25/2017)
01/25/2017		Certified and Electronically Transmitted Record on Appeal to US Court of Appeals and waiting for acceptance re 70 Notice of Appeal. A separate docket entry will be made once the record is accepted and may then be requested by the parties. (cwl) (Entered: 01/25/2017)
02/02/2017		DOCKET ANNOTATION as to # 70 In error the appeal in this case was transmitted to the 5th Circuit Court of Appeals. Case is today being re-transmitted to the U. S. Court of Appeals for the Federal Circuit. The Appeal should retain same file date it was received in the District Court. (cwl) (Entered: 02/02/2017)
02/06/2017	71	CERTIFIED COPY OF USCA JUDGMENT/MANDATE DISMISSING as to 70 Notice of Appeal filed by Wiley R. Kuyrkendall (ISSUED AS MANDATE 2/6/17) (Attachments: # 1 Cover Letter)(MGB) (Entered: 02/06/2017)
03/08/2017	72	USCA for the Federal Circuit Case No. 17-1713 as to Wiley R. Kuyrkendall (Attachments: # 1 Envelope) (cwl) (Entered: 03/08/2017)

PACER Service Center			
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03/28/2017 12:11:45			
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Description:	Docket Report	**Search Criteria:**	3:14-cv-00751-CWR-FKB
Billable Pages:	7	**Cost:**	0.70

FORM 1. Notice of Appeal to the United States Court of Appeals for the Federal Circuit from a Judgment or Order of a UNITED STATES DISTRICT COURT Form 1 Rev. 03/16

United States District Court

for the

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JAN 19 2017
ARTHUR JOHNSTON
BY ____ DEPUTY

Southern District of Mississippi

The United States, Plaintiff,

v. Case No. 3-14-cv-751

Wiley Randolph Kuyrkendall, Defendant.

NOTICE OF APPEAL

Notice is hereby given that Wiley Randolph Kuyrkendall (name all parties * taking the appeal) in the above named case hereby appeal to the United States Court of Appeals for the Federal Circuit Final Judgment Summary Judgment and Decree of Foreclosure (from the final judgment) ((from an order) (describe the order)) entered in this action on Nov 21, 2016

Wiley R. Kuyrkendall
(Signature of appellant or attorney)

Wiley Randolph Kuyrkendall, 200 Grandview Court, Pearl, Mississippi 39208

rf4c@hushmail.com

(Address of appellant or attorney and e-mail address)

Reset Fields

*See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

Attachment 2 - page 1 of 1

General Docket
United States Court of Appeals for the 5th Circuit

Court of Appeals Docket #: 17-60031
Nature of Suit: 1870 Tax Suits (Tax from DC)
USA v. Wiley Kuyrkendall
Appeal From: Southern District of Mississippi, Jackson
Fee Status: Fee Paid

Docketed: 01/20/2017
Termed: 02/06/2017

Case Type Information:
1) United States Civil
2) United States
3)

Originating Court Information:
District: 0538-3 : 3:14-CV-751
Originating Judge: Carlton W. Reeves, U.S. District Judge
Date Filed: 09/25/2014
Date NOA Filed: 01/19/2017
Date Rec'd COA: 01/19/2017

Prior Cases:
None

Current Cases:
None

Panel Assignment: Not available

UNITED STATES OF AMERICA Plaintiff - Appellee	Robert E. Dozier Direct: 202-514-6073 Email: robert.e.dozier@usdoj.gov Fax: 202-514-9868 [NTC Government] U.S. Department of Justice Tax Division P.O. Box 14193 Ben Franklin Station Washington, DC 20044-0000
v.	
WILEY R. KUYRKENDALL Defendant - Appellant	Wiley R. Kuyrkendall Direct: 601-965-9552 [NTC Pro Se] 200 Grandview Court Pearl, MS 39208

Attachment 3 - page 1 of 4

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

WILEY R. KUYRKENDALL,

Defendant - Appellant

01/20/2017	1 pg, 140.24 KB	US CIVIL CASE docketed. NOA filed by Appellant Mr. Wiley R. Kuyrkendall [17-60031] (MAS)
01/25/2017	2 pg, 88.09 KB	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [8409121-2] Initial AA Check Due satisfied. [17-60031] (MAS)
01/25/2017		ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 3:14-CV-751. Electronic ROA due on 02/09/2017. [17-60031] (MAS)
01/26/2017		ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [17-60031] (MRB)
01/26/2017	4 pg, 93.63 KB	BRIEFING NOTICE ISSUED A/Pet's Brief Due on 03/07/2017 for Appellant Wiley R. Kuyrkendall. [17-60031] (MRB)
02/02/2017	1 pg, 70.35 KB	LETTER OF ADVISEMENT. Reason: Advising the appellant that the appeal will continue in this court. If he wishes to dismiss the appeal here, he must file a motion to dismiss with this court. [17-60031] (CB)
02/06/2017	2 pg, 40.68 KB	MOTION filed by Appellant Mr. Wiley R. Kuyrkendall to dismiss appeal pursuant to Fed. R. App. P. 42 [8418572-2]. Date of service: 02/02/2017 [17-60031] (CB)
02/06/2017	2 pg, 155.58 KB	CLERK ORDER granting motion to dismiss appeal pursuant to Fed. R. App. P. 42 filed by Appellant Mr. Wiley R. Kuyrkendall [8418572-2] [17-60031] (CB)

Attachment 3 - page 3 of 4

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- (●) Documents and Docket Summary
- ( ) Documents Only

[ ] Include Page Numbers

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5th Circuit - Appellate - 03/22/2017 12:14:35			
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Description:	Docket Report (full)	Search Criteria:	17-60031
Billable Pages:	1	Cost:	0.10

Attachment 3 - page 4 of 4

General Docket
United States Court of Appeals for the Federal Circuit

Court of Appeals Docket #: 17-1713 **Docketed:** 03/01/2017
Nature of Suit: 870 Tax Suits (US Plaintiff)
US v. Kuyrkendall
Appeal From: United States District Court for the Southern District of Mississippi
Fee Status: fee paid

Case Type Information:
1) Civil US
2) -
3) -

Originating Court Information:
District: 0538-3 : 3:14-cv-00751-CWR-FKB
Trial Judge: Carlton W. Reeves, United States District Judge
Date Filed: 09/25/2014
Date NOA Filed: 01/19/2017
Date Rec'd COA: 02/21/2017

Prior Cases:
None

Current Cases:
None

UNITED STATES Plaintiff - Appellee	Norah Bringer Direct: 202-307-6224 Email: norah.e.bringer@usdoj.gov [LD NTC Government] U.S. Department of Justice Tax Division, Appellate Section Ben Franklin Station PO Box 502 Washington, DC 20044 Jonathan S. Cohen, Attorney Direct: 202-514-2970 Email: appellate.taxcivil@usdoj.gov Fax: 202-514-8456 [COR NTC Government] Department of Justice Tax Division PO Box 502 Ben Franklin Station Washington, DC 20044
v.	
WILEY R. KUYRKENDALL Defendant - Appellant	Wiley R. Kuyrkendall, - Direct: 601-965-9552 [NTC Pro Se] 200 Grandview Court Pearl, MS 39208
GREENBRIAR HOLDINGS Defendant	
GLACIER SYSTEMS Defendant	
CHRIS IRBY Defendant	

Attachment 4- page 1 of 5

CHRIS IRBY INSURANCE AGENCY, INC.
Defendant

TERESA L. HATHORN, fka Teresa A. Kuyrkendall
Defendant

JUDY FORTENBERRY, Tax Collector of Rankin County, Mississippi
Defendant

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY
Defendant

MISSISSIPPI DEPARTMENT OF REVENUE
Defendant

UNITED STATES,

Plaintiff - Appellee

v.

WILEY R. KUYRKENDALL,

Defendant - Appellant

GREENBRIAR HOLDINGS, GLACIER SYSTEMS, CHRIS IRBY, CHRIS IRBY INSURANCE AGENCY, INC., TERESA L. HATHORN, fka Teresa A. Kuyrkendall, JUDY FORTENBERRY, Tax Collector of Rankin County, Mississippi, MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY, MISSISSIPPI DEPARTMENT OF REVENUE,

Defendants

Attachment 4- page 3 of 5

03/01/2017	1 29 pg, 1.01 MB	Appeal docketed. Received: 02/21/2017. [411721] Entry of Appearance due 03/15/2017. Appellant/Petitioner's Informal brief is due 03/22/2017.
03/08/2017	2 2 pg, 154.48 KB	Entry of appearance for Norah E. Bringer as principal counsel for Appellee US. Service: 03/08/2017 by US mail, email. [413532]
03/15/2017	3 3 pg, 613.34 KB	Entry of appearance for Wiley Randolph Kuyrkendall as pro se appellant. Service: 03/13/2017 by US mail. [416321]
03/15/2017	5 5 pg, 793.8 KB	Docketing Statement for the Appellant Wiley R. Kuyrkendall [no action taken by clerk - form not required]. Service: 03/13/2017 by US mail. [416328]
03/15/2017	8 3 pg, 422.69 KB	MOTION of Appellant Wiley R. Kuyrkendall requesting 'formal briefing schedule'. *Any response is due within 10 days of service* [Consent: not addressed]. Service: 03/17/2017 by clerk. [416516]
03/16/2017	4 3 pg, 509.59 KB	Certificate of Interest for the Appellant Wiley R. Kuyrkendall [form is incomplete - no action taken by clerk as form is not required]. Service: 03/13/2017 by US mail. [416325]
03/16/2017	6 2 pg, 154.54 KB	Entry of appearance for Jonathan S. Cohen as of counsel for Appellee US. Service: 03/16/2017 by US mail, email. [416375]
03/16/2017	7 11 pg, 93.13 KB	CORRECTED ENTRY: MOTION of Appellee US to terminate appeal through transfer to USCA 5th Circuit. [Consent: opposed]. Service: 03/16/2017 by US mail, email. [416384]--[Edited 03/17/2017 by SJ - Reason: to add additional reliefs]
03/17/2017	9 2 pg, 69.21 KB	ORDER filed. The briefing schedule is stayed pending disposition of the motions. See Fed. Cir. R. 31(c). Service: 03/17/2017 by clerk. [416554]

Attachment 4- page 4 of 5

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Documents and Docket Summary
Documents Only

Include Page Numbers

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Description:	Docket Report (filtered)	Search Criteria:	17-1713
Billable Pages:	1	Cost:	0.10

Attachment 4- page 5 of 5

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

United States v. Wiley R. Kuyrkendall, et al.

No. 17-1713

ENTRY OF APPEARANCE

(INSTRUCTIONS: Counsel should refer to Federal Circuit Rule 47.3. Counsel must immediately file an updated Entry of Appearance if representation changes, including a change in contact information. Electronic filers must also report a change in contact information to the PACER Service Center. Pro se petitioners and appellants should read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. File this form with the clerk within 14 days of the date of docketing and serve a copy of it on the principal attorney for each party.)

Please enter my appearance (select one):

☐ Pro Se ☒ As counsel for: United States
Name of party

I am, or the party I represent is (select one):

☐ Petitioner ☐ Respondent ☐ Amicus curiae ☐ Cross Appellant

☐ Appellant ☒ Appellee ☐ Intervenor

As amicus curiae or intervenor, this party supports (select one):

☐ Petitioner or appellant ☐ Respondent or appellee

Name:	Norah E. Bringer
Law Firm:	U.S. Department of Justice, Tax Division, Appellate Section
Address:	Post Office Box 502
City, State and Zip:	Washington, D.C. 20044
Telephone:	(202) 307-6224
Fax #:	(202) 514-8456
E-mail address:	appellate.taxcivil@usdoj.gov; norah.e.bringer@usdoj.gov

Statement to be completed by counsel only (select one):

☒ I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel in this case of the matters served upon me.

☐ I am replacing ____________ as the principal attorney who will/will not remain on the case. [Government attorneys only.]

☐ I am not the principal attorney for this party in this case.

Date admitted to Federal Circuit bar (counsel only): ________

This is my first appearance before the United States Court of Appeals for the Federal Circuit (counsel only): ☐ Yes ☒ No

☐ A courtroom accessible to the handicapped is required if oral argument is scheduled.

Date Mar 8, 2017 Signature of pro se or counsel /s Norah E. Bringer

cc: Wiley R. Kuyrkendall

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FORM 30. Certificate of Service

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF SERVICE

I certify that I served a copy on counsel of record on March 8, 2017
by:

☒ U.S. Mail

☐ Fax

☐ Hand

☒ Electronic Means (by E-mail or CM/ECF)

Name of Counsel	Signature of Counsel
Norah E. Bringer	s/ Norah E. Bringer

Law Firm	U.S. Department of Justice, Tax Division, Appellate Section
Address	Post Office Box 502
City, State, Zip	Washington, D.C. 20044
Telephone Number	(202) 307-6224
Fax Number	(202) 514-8456
E-Mail Address	appellate.taxcivil@usdoj.gov; norah.e.bringer@usdoj.gov

NOTE: For attorneys filing documents electronically, the name of the filer under whose log-in and password a document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. Graphic and other electronic signatures are discouraged.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

UNITED STATES, Plaintiff-Appellee v. WILEY R. KUYRKENDALL, Defendant-Appellant GREENBRIAR HOLDINGS, *et al.*, Defendants	)	No. 17-1713

APPELLEE'S MOTION TO TRANSFER APPEAL TO THE FIFTH CIRCUIT AND HOLD BRIEFING IN ABEYANCE

The United States, appellee herein, by its undersigned counsel, moves this Court to transfer this appeal to the United States Court of Appeals for the Fifth Circuit, where jurisdiction and venue properly lie. The Government also requests that briefing be held in abeyance while the Court considers this motion. The reasons for this motion are set forth below.

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STATEMENT

This is an appeal brought by Wiley R. Kuyrkendall from the November 21, 2016, final judgment of the United States District Court for the Southern District of Mississippi. (Doc. 68.[1])

Prior to this civil action, in August 2009, a jury convicted Kuyrkendall of four counts of failing to file federal income tax returns, under I.R.C. § 7203, for tax years 2002 through 2005. *United States v. Kuyrkendall*, No. 3:09-cr-18 (S.D. Miss.). In a related case, he pleaded guilty, in October 2009, to two counts of criminal contempt, under 18 U.S.C. § 401(3). *United States v. Kuyrkendall*, No. 3:09-cr-117 (S.D. Miss.). He was sentenced to a total of 46 months in prison.

On September 25, 2014, the United States filed its complaint in this case (Doc. 1), seeking to reduce to judgment (pursuant to I.R.C. § 7402) Kuyrkendall's unpaid federal tax liabilities for tax years 2001 and 2002, and to foreclose the federal tax liens on certain parcels of real

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1 "Doc." references are to the documents in the original record, as numbered by the Clerk of Court for the Southern District of Mississippi in Case No. 3:14-cv-751. "I.R.C." references are to the Internal Revenue Code, 26 U.S.C.

property. The Government filed an amended complaint on October 15, 2014. (Doc. 3.) Pursuant to I.R.C. § 7403, the Government named as defendants people and entities, in addition to Kuyrkendall, who may have claimed an interest in the properties at issue. The other defendants in this action did not join in the notice of appeal. (*See* Doc. 70.)

In due course, the Government filed a motion for summary judgment. (Docs. 44-45.) Kuyrkendall thereafter filed a motion to dismiss, in which he appeared to argue that the District Court lacked subject-matter and personal jurisdiction. (Docs. 48-49; *see* Doc. 64 at 3.) The court denied Kuyrkendall's motion and granted summary judgment in the Government's favor. (Doc. 64.) The court concluded that it had personal jurisdiction over Kuyrkendall because he is a resident of the State of Mississippi, and the court observed that Kuyrkendall's "challenge to subject matter jurisdiction is based on frivolous tax defier arguments, much of which are unintelligible." (*Id.* at 3.)

With respect to the Government's motion for summary judgment. the court noted that Kuyrkendall admitted that he did not file a federal income tax return for 2001 or 2002. (*Id.* at 4.) The Internal Revenue Service assessed his income tax liabilities for those years, and satisfied its burden of demonstrating the validity of the tax assessments. (*Id.* at 5.) Kuyrkendall "[did] not dispute the validity of the assessments," and instead "advance[d] meritless tax defier contentions." (*Id.* at 5.) Inasmuch as there was no genuine issue of material fact regarding whether Kuyrkendall was liable for the unpaid tax liabilities for 2001 and 2002, the court entered judgment in favor of the United States in the amount of $434,050.44, plus interest and statutory additions. (*Id.* at 5; Doc. 68.) One parcel of real property listed in the Government's amended complaint was sold during the District Court proceedings, and the court ordered foreclosure of the federal tax liens against the remaining parcel. (Doc. 64 at 5-7; Doc. 69.) On November 21, 2016, the court entered final judgment (Doc. 68), as well as a decree of foreclosure and order of sale (Doc. 69).

Kuyrkendall filed a notice of appeal on a form that the District Court provided for appeals to this Court. (Doc. 70.) The District Court Clerk's Office understandably transmitted the notice of appeal to the

Fifth Circuit, where this appeal should proceed. But an annotation on the District Court docket, entered February 2, 2017, stated that the appeal was transmitted to the Fifth Circuit "in error," and that the case was "being re-transmitted to the U.S. Court of Appeals for the Federal Circuit." On that same day, however, the Fifth Circuit Office of the Clerk issued a letter to Kuyrkendall, advising him that his appeal would continue in that court, unless he filed a motion to dismiss. The Fifth Circuit docketed the appeal as No. 17-60031, and issued a briefing schedule.

Kuyrkendall thereafter moved to dismiss the appeal in the Fifth Circuit, stating that he viewed this Court as the only appellate court with jurisdiction over the appeal. The Fifth Circuit accordingly dismissed the appeal, and this Court docketed the instant appeal on March 1, 2017. But, as discussed *infra*, this Court lacks jurisdiction to review the District Court's decision, and the appeal should be transferred to the Fifth Circuit, where the appeal may be heard.

DISCUSSION

The Fifth Circuit has jurisdiction, and is the proper venue for this appeal.

This Court's jurisdiction to review final decisions and certain interlocutory orders of the federal district courts is limited to review of those decisions and orders set forth in 28 U.S.C. §§ 1292(c) and (d), and 1295. 28 U.S.C. § 1291. This Court lacks jurisdiction to review Kuyrkendall's appeal, because the District Court's decision in this case does not fall within any of those statutory provisions. Indeed. although this Court has jurisdiction to review tax refund suits decided by the Court of Federal Claims, see 28 U.S.C. §§ 1295 and 1346(a)(1), it does not have jurisdiction of an appeal in a case such as this one, where the Government brought suit in a federal district court to collect unpaid taxes. *See* 28 U.S.C. §§ 1291, 1292 (c) and (d), 1295. Rather, such a case is governed, as relevant here, by 28 U.S.C. §§ 1291 and 1294. *Id.*

Under 28 U.S.C. § 1291, "[t]he courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States." Moreover, 28 U.S.C. § 1294 provides that "appeals from

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reviewable decisions of the district and territorial courts shall be taken . . . [f]rom a district court of the United States to the court of appeals for the circuit embracing the district." 28 U.S.C. § 1294(1). The decision at issue here was entered by the United States District Court for the Southern District of Mississippi, and that district is located (*i.e.*, "embrace[d]") within the Fifth judicial circuit. 28 U.S.C. § 41. Accordingly, jurisdiction for this appeal (as well as venue) lies in the United States Court of Appeals for the Fifth Circuit.

Under 28 U.S.C. § 1631, this Court "shall, if it is in the interest of justice," transfer this appeal "to any other court in which the . . . appeal could have been brought at the time it was filed or noticed." In this case, that court is the Fifth Circuit, and the United States therefore asks this Court to transfer the appeal to the Fifth Circuit.

The Government notes that Kuyrkendall's informal opening brief is due on April 22, 2017. To preserve judicial resources and promote the efficient resolution of this case, we request that briefing be held in abeyance pending the disposition of the instant motion.

Counsel for the Government sought the views of Kuyrkendall on this motion, and he opposes the motion to transfer venue.

CONCLUSION

For the foregoing reasons, this appeal should be transferred to the Fifth Circuit, and the current briefing schedule should be held in abeyance while this Court considers this motion.

Respectfully submitted,

DAVID A. HUBBERT
Acting Assistant Attorney General

/s/ Norah E. Bringer

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Dated: March 16, 2017

15233991.6

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

UNITED STATES, Plaintiff-Appellee v. WILEY R. KUYRKENDALL, Defendant-Appellant GREENBRIAR HOLDINGS, *et al.*, Defendants	)	No. 17-1713

DECLARATION

I, Norah E. Bringer, of the Department of Justice, Washington, D.C., state as follows:

1. I am an attorney employed in the Appellate Section of the Tax Division, United States Department of Justice, and in that capacity I have been assigned the primary responsibility for handling the above-captioned case on behalf of the appellee.

15233991.6

2. The facts set forth in the accompanying motion are true to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on March 16, 2017, in Washington, D.C.

/s/ Norah E. Bringer
NORAH E. BRINGER

15233991.6

CERTIFICATE OF SERVICE

It is hereby certified that, on March 16, 2017, I caused the foregoing documents to be electronically filed with the Clerk of Court for the United States Court of Appeals for the Federal Circuit using the appellate CM/ECF system.

I further certify that I have caused the foregoing documents to be mailed by first-class mail, in an envelope addressed to the appellant at the following address:

Mr. Wiley R. Kuyrkendall
200 Grandview Court
Pearl, MS 39208

/s/ Norah E. Bringer
Norah E. Bringer
Attorney

15233991.6

✓

Calendar No. 324

96TH CONGRESS 1st Session } SENATE { REPORT No. 96–304

FEDERAL COURTS IMPROVEMENT ACT OF 1979

AUGUST 3 (legislative day, JUNE 21), 1979.—Ordered to be printed

Mr. KENNEDY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1477]

The Committee on the Judiciary, to which was referred the bill (S. 1477) to provide for improvements in the structure and administration of the Federal courts, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

PURPOSE OF THE AMENDMENT

The amendments were technical and clarifying in nature. The purpose of the bill as amended is identical to the purpose of the bill as introduced.

PURPOSE OF THE BILL

The purpose of S. 1477 is to resolve some of the myriad structural administrative and procedural problems that have impaired the ability of our Federal courts to deal with the vast range of controversies among our citizens and to respond promptly and meaningfully to their demands for justice. Those problems—which include the inability of our present system to provide a prompt, definitive answer to legal questions of nationwide significance—have been long debated by judges, lawyers, legal scholars, and those members of the general public concerned with the administration of the Federal justice system.

The Courts Improvement Act is one of a series of court reform bills that the committee will consider during the 96th Congress as part of a comprehensive program designed to improve the quality of our Federal court system and to enhance citizen access to justice.

EXPLANATION OF THE BILL

On March 15, 1979, Senate bills S. 677, the Judicial Improvement Act of 1979, and S. 678, the Federal Courts Improvement Act of 1979, were introduced and subsequently referred to the Committee on the Judiciary. The two bills were substantially identical except that S. 678 included some additional reforms absent from S. 677. Seven days of hearings were held on the bills and as a result the original bills were significantly revised. To avoid confusion, the committee decided to take the revised bills and introduce them as a new bill. S. 1477, is the product of the evolution of S. 677 and S. 678.

Title I—Governance and Administration

Title I recognizes that our courts must be properly governed and administered if the goals of fairness and efficiency in the administration of justice are to be achieved.

Chief judge tenure.—Under existing law, the chief judge of each Federal court of appeals or district court is the judge who is most senior in commission and under age 70. Depending on the relative ages and seniority of the judges in a given circuit or district, a court may have a single chief judge for many years, or it may have a rapid turnover in the chief judge's position if several judges on the court reach age 70 within a relatively short period. Either extreme may result in administrative inefficiencies that are a needless additional burden on the already overworked courts. Part A of title I retains seniority as the basis for the appointment of a chief judge but avoids the extreme of either too lengthy or too short a term by fixing seven years as the maximum term of service and by precluding appointment of a chief judge who is 65 or older at the time of his appointment. Thus, both a minimum and maximum term is established, thereby striking a sound balance between continuity and rotation. As a transitional measure, these changes will not take effect until one year after the date of enactment and will not apply to anyone serving as a chief judge on that effective date.

Precedence and composition of panel.—Part B of title I requires that Federal appellate panels be composed of at least three judges, at least a majority of whom shall be judges of the circuit court, and that the presiding judge be a judge of that court in regular active service. Current law seems to permit appellate courts to sit in panels of less than three judges, and some courts have used panels of two judges for motions and for disposition of cases in which no oral argument is permitted because the case is classified as insubstantial. In order for the Federal system to preserve both the appearance and the reality of justice, such a practice should not become institutionalized. The disposition of an appeal should be the collective product of at least three minds. Moreover, this section would permit the courts of appeals to sit in panels of three or more judges but less than a full en banc court for cases in which authoritativeness of opinion is particularly useful or in which the issues are especially difficult or important. The circuit courts could continue to adopt local rules permitting the disposition of an appeal in situations in which one of the three judges dies or becomes disabled and the remaining two agree on the disposition; but, in the first instance, all cases would be assigned to panels of at least three judges.

With a substantial number of judges from outside the circuit sitting by designation, and with district judges sitting regularly on the courts of appeals, it is not infrequent that there will be only one circuit judge on a panel or that the presiding judge will be a senior judge or a judge from another circuit. Such situations lead to doctrinal instability and unpredictability in the law of the circuit because district court and court of appeals judges from outside the circuit may not know or may not feel bound by the law of that circuit. In addition, a strong argument can be made that the law of a particular circuit should be determined by an appellate court, the majority of which should be judges of that circuit. The Bill discourages any unnecessary borrowing of judges and promotes stability and predictability by requiring a majority of each panel to be composed of judges of the circuit court.

Judicial Councils.—Established over forty years ago to help administer and manage the court within each circuit,[1] the judicial councils have a mixed record of success. Each judicial council is currently composed of the active circuit judges of the circuit. It is presided over by the chief judge of the circuit and is required to meet at least twice annually. Its duties are to consider reports from the Administrative Office and "make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit." [2] The district judges of the circuit are directed to "promptly carry into effect all orders" of the judicial council.[3]

To numerous observers, these regional councils have never succeeded to the degree originally intended.[4] In 1959, for example, the Senate Appropriations Committee concluded that there existed "a grave lack of administrative direction in the operation of the business of the United States courts" and that this defect resulted in "serious and, in some cases, shocking conditions of delay and neglect of cases on court dockets." [5] The committee laid a major share of the blame on the judicial councils.[6]

The ongoing controversy over the nature and functions of the judicial councils has raised important issues meriting examination by the committee. S. 1477 addresses council problems relating to organization and responsibilities. These responsibilities, in theory, are numerous: assigning judges to congested districts and to particular types of cases, directing judges to assist infirm judges, ordering judges to decide cases long held under advisement, urging judges to clear congested court dockets, and setting standards of judicial ethics and behavior.

With the creation of 152 new judgeships, the sponsors of S. 1477 recognize the need to once again reexamine the basis for judicial council organization. S. 1477 is designed to make councils more effective and efficient by changing their membership and structure. The bills, as originally introduced as S. 677 and S. 678 limited the size of such councils to a maximum of seven appellate judges and provided—for the first time—membership of up to four district court judges. By reducing their size, increasing their administrative responsibilities (in the area of judicial discipline) and mandating district

[1] The Administrative Office Act of 1939, 28 U.S.C. §§ 601, 603, 606, 608 (1964). (53 Stat. 1223.)

[2] 28 U.S.C. § 332(d) (1976).

[3] *Id.*

[4] See, e.g., P. Fish, "The Circuit Councils: Rusty Hinges of Federal Judicial Administration," 37 Univ. of Chi. L. Rev. 203 (1970); J. Wallace, "Judicial Administration in a System of Independents: A Tribe With Only Chiefs," 1 Brigham Young Univ. L. Rev. 39 (1978); see also, Administrative Office of the United States Courts, Survey of the Legal Profession Containing Critical Comments on the Judicial Councils and Judicial Conferences of the Circuits in the Federal System, Memorandum No. 3, Mar. 15, 1956.

[5] Staff of Senate Committee on Appropriations, 86th Cong., 2d sess., Field Study of the Operations of United States Courts, p. 1 (Committee Print 1959).

[6] *Id.* at 84–84b.

court representations, S. 1477 makes a concerted effort to give the councils a more important role in court administration and management.

As a result of extensive testimony, the committee is now of the view that the bills should be modified. Although S. 1477 will continue to mandate that the councils permanently include district court judges for the first time, the committee believes that the size and nature of the councils, as well as the method of selecting council members, should better be left to the judges themselves. Specifically, the committee has decided to conform S. 1477 to reflect the March, 1979 Judicial Conference Resolution of the Court Administration Committee calling for modifications in the structure and governance of the councils. This Resolution has been adopted almost verbatim by the committee which is of the opinion that such modifications should best be left to the judges themselves. Thus, the judges should be given the opportunity to determine, in their best judgment, what the optimum size of the council should be and what percentage of council membership should consist of district court judges (within limits set out in the statute). Accordingly, S. 1477 mandates that the district judges be given permanent membership status on the councils but leaves most other questions for individual judicial council resolution based on the needs of the particular circuit.

This is not to say that the committee has not formulated strong views as to the best approach to be taken concerning these problems; rather, the committee would first give the judiciary—a coequal branch of government—the first opportunity to deal with the important issues raised during Senate hearings. For example:

1. *Representation by circuit judges and district judges.*—Although the bill requires that district judges be members of the council, it does not state the nature and scope of that membership. Rather it leaves the issue to the councils themselves in accordance with the Judicial Conference Resolution. Hearing witnesses were divided on this point. Judge Clifford Wallace of the ninth circuit called for councils composed equally of district and circuit judges; Chief Judge John Brown of the fifth circuit urged that all circuit judges occupy a place on the council, with district judges having some form of symbolic representation. The committee is of the view that since the councils have important administrative responsibilities in areas such as judicial discipline, it is important that district court judges be given a strong voice in council deliberations. The committee concluded that it is unwise to provide for district judge membership only when the matter at issue involves the district courts. District judges should be members of the council for all purposes; not only is it often difficult to distinguish district court matters from other matters affecting the administration of the entire circuit, but the committee is convinced that the district judges could bring an additional perspective and understanding which is lacking today. It is important to bear in mind that the role of the judicial council is to administer the business of the circuit as a whole; it is not to administer the courts of appeals.

2. *The size of the councils.*—The committee decided that S. 677 and S. 678, as introduced, placed an arbitrary limitation on the size of the circuit councils by permitting no more than seven circuit judges and four district court judges. The committee reaffirms

S. 677 and S. 678 insofar as they provided that a reduction in the overall size of the council is imperative because of the recent unprecedented growth of the Federal judiciary. With the mandated addition of district court judges, the committee is also of the view that continuing the current practice of including all circuit judges as members of the council is likely to result in the creation of an ungovernable, unwieldy council body. This is so, particularly in the fifth and ninth circuits which each have more than twenty appellate judges. The committee is mindful, however, of the testimony of Chief Judge Brown, who testified that all of the circuit judges should continue to serve on the council. Accordingly, the committee leaves to the judges themselves the ultimate responsibility for deciding this issue in accordance with the Judicial Conference Resolution. Questions pertaining to the size of the council should be dealt with in the context of deciding the nature and extent of district court representation and the method of selecting council members. The goal must be the development of a body that has both district and circuit judges as members but that is not so large and unwieldy as to become ineffective.

3. *Method of selection.*—As introduced, S. 677 and S. 678 mandated that membership on the circuit councils would be determined on the basis of seniority of commission. Committee hearings have convinced the members that election of council members is the preferable course to take; however, once again, the committee is of the view that the judges should first be given the opportunity to resolve this issue. A distinguished group of witnesses—for example, Judge Wallace, Judge Newman, and Judge Friendly—were of the opinion that election of members was to be preferred over mere seniority. Recognizing the concern of some that election of members would unwisely interject politicking into the selection of council members, the witnesses concluded that this danger is outweighed by the need to place the most interested, informed and dedicated judges on the councils. The witnesses pointed out that the administration of the circuit workload is a time-consuming, important task better left to those eager to shoulder the responsibility. There can be no question that the judges of the circuit are in the best position to know those most qualified to serve in an administrative capacity. The committee acknowledges the risk of an election procedure but concludes that it is overstated; the judges of the circuit are likely to recognize that it is in their own best interest to choose as their representatives on the council those who have demonstrated administrative ability and temperment. In any event, the committee does not believe that the risks accompanying election compare with those of ineffective administration—and likely congressional intervention—which are inherent in a system which leaves the selection process completely to chance. Once again, however, the committee gives the judges themselves the first opportunity to resolve this difficult issue.

Retirement and pensions.—Part D of title I addresses the issue of judicial resignation and retirement and also the pension of a government employee who leaves judicial office to serve in other government service.

Section 131 conforms paragraphs (a) and (b) of section 371 of title 28, United States Code, by providing that in order to retain full salary after either resignation or retirement, a judge must serve at least fifteen years and attain the age of 65, or serve ten years and attain the age of 70. Existing law permits the continuation of full salary after resignation only if a judge has served ten years and attained the age of 70.

Section 132 requires the Administrative Office of the United States Courts to pay a deposit into the civil service retirement fund for article III judges who resign to accept executive branch positions. Such Federal judges give up a lifetime salary mandated by the Constitution, even though they have not been able to accrue pension benefits for their years of Federal service under the civil service retirement program. Under existing law, such judges are credited for their years of service on the Federal bench but receive a sharply reduced retirement annuity since contributions to the fund were not made during those years. The Act requires the Administrative Office to deposit into the fund an amount sufficient to provide a full retirement annuity for former Federal judges who have foregone their lifetime salaries to accept other employment by the Federal Government.

This amendment is designed to prevent injustice and to avoid penalizing judges who leave the bench to accept Executive appointments.

Temporary assignment of judges to administrative positions.—Part E of title I authorizes an active or retired justice or judge of the United States to be assigned temporarily to the position of Administrative Assistant to the Chief Justice, Director of the Administrative Office of the United States Courts, or Director of the Federal Judicial Center. Such service would be without additional compensation.

This provision makes available to the judiciary the talents of administratively able judges and thereby strengthens the administration of the Federal judiciary. Presently, the Office of the Chief Justice is administratively overloaded; this proposal makes it possible for the Chief Justice to delegate a larger array of his routine administrative duties. This section was first proposed by the Chief Justice of the United States almost a decade ago; the committee is of the opinion that the appropriate appointing bodies should have the flexibility and authority to staff these positions with especially competent and talented members of the Federal judiciary.

The committee is, of course, aware that it may not be necessary to invoke this section in filling the various vacancies. Certainly, the Federal Judicial Center, Administrative Office and Administrative Assistant positions have not suffered in the past from the failure of a sitting judge to be appointed. But the committee is of the view that there should be the option of filling these vacancies with competent appointments from the Federal judiciary. Although the committee considers this Part to be a very useful measure, it is not designed to provide the ultimate solution to the problems of administering a greatly enlarged Federal judiciary. As the Chief Justice has continuously pointed out, those problems require further study and legislative attention.

Publication of rules.—Part F of title I amends chapter 131 of title 28 of the United States Code by adding a new section 2077.

Paragraph (a) calls for the publication of rules governing conduct of the business of the court.

Paragraph (b) requires each court of appeals to create an advisory committee to make recommendations to the judges in formulating rules of practice and of internal operating procedures. This would provide valuable assistance to the judges in developing sound rules and would provide practitioners with useful information and a better understanding concerning the court's business.

Title II—Jurisdiction and Procedure

Interlocutory appeals.—Part A of title II amends 28 U.S.C. section 1292(b) to permit the courts of appeals to entertain appeals from interlocutory orders in civil actions, if, after a refusal by a district judge to certify the matter for appeal in accordance with the provisions of existing law, the court of appeals determines that an appeal "is required in the interests of justice and because of the extraordinary importance of the case." This eliminates the possibility of a recurrence of the unseemly situation in the *Socialist Workers* case, *In re United States*, 565 F. 2d 19 (2d Cir. 1977), *cert. denied*, 436 U.S. 962 (1978); cf. *In re Attorney General of the United States*, 596 F. 2d 58 (2d Cir. 1979) in which the Attorney General was compelled to incur a civil contempt citation before bringing a matter of this nature before the court of appeals.

The committee is aware that this section undercuts to some extent the prevailing "rule of finality," which encourages litigants to complete trials in the district courts before appealing to a Federal circuit court. Some witnesses expressed the fear that amending section 1292 (b) would lead to a flood of increased, piecemeal appeals causing unnecessary delay.

Nevertheless, the committee has approved this section, noting particularly the language found in existing law prohibiting a stay in the district court proceedings "unless the district judge or the court of appeals or a judge thereof shall so order." This helps to insure that frivolous appeals taken to the appellate court will not result in unnecessary delay in the completion of the trial below. It should also be pointed out that the committee is of the opinion that most of the applications made pursuant to this new section could easily and quickly be resolved by a member of the court of appeals without requiring the type of full-blown hearing that would likely delay the work of the district and circuit courts alike.

Nor should the "rule of finality" be used to undercut the argument that this new section—while, perhaps, increasing the initial burden on the courts of appeals—will result in economies for judicial administration. Trials might be greatly expedited, rather than delayed, by preliminary final determinations of one or more issues of law. Often, extended pretrial discovery proceedings and trials themselves can be made unnecessary by preliminary determinations of issues which district court judges refused to certify under existing section 1292(b). The committee believes that this new section can, in the long run, foster not inhibit judicial efficiency.

Transfer of cases.—In recent years, much confusion has been engendered by provisions of existing law that leave unclear which of two or more Federal courts have subject matter jurisdiction over certain categories of civil actions. The problem has been particularly acute in the area of environmental law where misfilings and dual filings have become commonplace. Part B of Title II cures this problem by authorizing any court of the United States that finds it lacks subject matter jurisdiction in a civil action to transfer the case to any Federal court in which the case could have been brought if the transferor court finds that the interests of justice warrant such a transfer.

Interest.—Under current law, the interest rate on judgments in the Federal courts is based on varying State laws and frequently falls below the contemporary cost of money. Part C of title II sets a realistic and nationally uniform rate of interest on judgments in the Federal courts that would be keyed to the prime interest rate as determined by the Internal Revenue Service. This eliminates an economic incentive which exists today for a losing defendant to appeal a judgment and accumulate interest on the judgment award at the commercial rate during the pendency of the appeal.

There are presently no generally applicable guidelines concerning the award of prejudgment interest in Federal courts. Yet such interest may be essential in order to compensate the plaintiff or to avoid unjust enrichment of the defendant. For instance, a plaintiff who is unlawfully deprived of the use of $20,000 in 1976, and who does not receive a judgment until 1979, could have obtained $4,500 in those three years by investing the money at seven percent compounded interest. The bill provides that, where a defendant knew of his liability, interest be awarded for the prejudgment period at a rate that is keyed to the prime interest rate, where this is necessary to compensate the plaintiff. The imposition of such interest would be left to the discretion of the district judge in each case.

Finally, the Committee took this opportunity to consolidate into one statute the three provisions of Title 28 of the United States Code dealing with the award of interest on judgments. Consequently the provisions of this bill for prejudgment interest and a new interest rate on judgments will apply uniformly to suits between private litigants and to suits against the government.

Title III—Trial and Appellate Structure for Government Claims, Patents, and Other Matters

Title III has three purposes: to fill a void in the judicial system by creating an appellate forum capable of exercising nationwide jurisdiction over appeals in areas of the law where Congress determines there is a special need for nationwide uniformity; to improve the administration of the patent law by centralizing appeals in patent cases; and to provide an upgraded and better organized trial forum for government claims cases. To achieve these goals, the bill establishes a new Federal court of appeals, to be called the United States Court of Appeals for the Federal Circuit. This is accomplished by merging the Court of Claims and the Court of Customs and Patent Appeals. The bill also creates a new article I trial forum known as the United States Claims Court, which would inherit the trial jurisdiction of the Court of Claims.

Court of Appeals for the Federal Circuit.—The bill creates an article III court that is similar in structure to the eleven other courts of appeals. It is composed of the twelve judgeships of the Court of Claims and the Court of Customs and Patent Appeals, which become United States circuit judgeships; those courts are abolished by the merger. The new court is on line with other Federal courts of appeals; that is, it is not a new tier in the judicial structure.

The Court of Appeals for the Federal Circuit differs from other Federal courts of appeals, however, in that its jurisdiction is defined in terms of subject matter rather than geography. The new court inherits, in appellate form, substantially all of the jurisdiction of the two courts abolished in the merger. This includes appeals in suits against the government and appeals from the Customs Court, the Patent and Trademark Office, and other statutorily defined agencies. One major exception is in the area of civil tax refund suits; under the act, these appeals will be within the exclusive jurisdiction of the new United States Court of Tax Appeals. However, the federal circuit also has expanded and exclusive jurisdiction of patent appeals from district courts throughout the Nation.

Contemporary observers recognize that there are certain areas of Federal law in which the appellate system is malfunctioning. A decision in any one of the eleven regional circuits is not binding on any of the others. As a result, our Federal judicial system lacks the capacity, short of the Supreme Court, to provide reasonably quick and definitive answers to legal questions of nationwide significance. The Supreme Court now appears to be operating at—or close to—full capacity; therefore, in the future the Court cannot be expected to provide much more guidance in legal issues than it now does. Yet the number and complexity of unsettled controversies in the law continues to grow.

Consequently, there are areas of the law in which the appellate courts reach inconsistent decisions on the same issue, or in which—although the rule of law may be fairly clear—courts apply the law unevenly when faced with the facts of individual cases. The difficulty here is structural. Since the Supreme Court's capacity to review cases cannot be enlarged significantly, the remedy lies in some reorganization at the intermediate appellate level. This matter has been the subject of intense study over the last decade.[7] Although enactment of the Omnibus Judgeship Act of 1978,[8] which authorized 152 new federal judgeships, meets some compelling problems of the judicial system, it fails to cure the basic weaknesses that have arisen in judicial structure.

The creation of a new Court of Appeals for the Federal Circuit through a merger of the Court of Claims and the Court of Customs and Patent Appeals (CCPA) addresses these structural problems. The Act provides a new forum for the definitive adjudication of selected categories of cases. At the same time, it improves the administration of the system by reducing the number of decision-making entities within the federal appellate system.

Testimony on S. 677 and S. 678 supported the premise that the capacity of the federal appellate courts to provide a nationwide answer to legal questions could be expanded through the establishment of new courts of appeals whose jurisdiction is defined on a topical rather than a geographical basis.[9] The creation of the Court of Appeals for the Federal Circuit provides such a forum for appeals from throughout the country in areas of the law where Congress determines that there is special need for national uniformity. The absence of such a court in the present Federal judicial system has compelled Congress from time to time in the past to create special courts to handle a narrow category of cases.[10] Although the jurisdiction of the federal circuit is presently delineated in the manner outlined above, the creation of a Federal appellate court with jurisdiction that is defined in terms of subject matter rather than territory provides an institutional structure which the Federal judicial system, as it is presently constituted, lacks. The committee has determined that an adequate showing has been made for nationwide subject matter jurisdiction in the areas of patent and claims court appeals. It must be understood, however, that it is not the committee's judgment that broader subject matter jurisdiction is intended for this court. A proposal that would provide just such broader jurisdiction—a National Court of Appeals—has been expressly considered by the committee, and rejected. It must therefore be noted that any additional subject matter, or geographic jurisdiction, for the United States Court of Appeals for the Federal Circuit will require not only serious future evaluation, but new legislation."

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[7] To increase the capacity of the federal judicial system for definitive adjudication of issues of national law, various proposals for restructuring the federal appellate courts have been considered in recent years by lawyers, jurists, and academicians. Detailed recommendations have been developed by the Study Group on the Caseload of the Supreme Court (the *Freund Committee*), the Committee on Revision of the Federal Court Appellate System (the *Hruska Commission*), and the Advisory Council for Appellate Justice chaired by Professor Maurice Rosenberg. See *Federal Judicial Center*, Report of the Study Group on the Caseload of the Supreme Court (1972); Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, reprinted in 67 F.R.D. 195 (1975); and Advisory Council for Appellate Justice, Recommendations for Improving the Federal Intermediate Appellate System (1975).

[8] Pub. L. No. 95-486.

Although the committee desires to make any changes in the judicial structure that are necessary to help the system function well, it is mindful of the need to avoid doing things that do not need doing. Originally, S. 677 and 678 included trademark appeals within the jurisdiction of the new court. However, the United States Trademark Association and other witnesses who appeared on this subject indicated there was no need for centralization of trademark appeals from the district courts.[11] The committee has accepted this judgment.

Throughout the development of this legislation, the committee and its staff have worked closely with the Department of Justice and the judges of the Court of Claims and the Court of Customs and Patent Appeals to assure that the merger of these two courts is both desirable and feasible. The committee is indebted to the judges of these courts, and particularly to Chief Judge Friedman and to Chief Judge Markey, for their testimony and assistance in understanding the impact of the proposal on their courts. The committee is satisfied that the merger of these courts would, in fact, produce significant improvements in the federal judicial structure. Testimony on S. 677 and S. 678 supported this proposition. Chief Judge Friedman of the Court of Claims testified at some length as to the substantial benefits that would result from the consolidation of these two courts into a new court of appeals.[12] Furthermore, the proposal was expressly endorsed by President Carter in a message to the Congress on February 17, 1979.[13]

From a practical standpoint, a merger of the Court of Claims and the CCPA can be accomplished with virtually no disruption to the people involved. The existing courts already jointly occupy almost all of the Courts Building at Lafayette Square in Washington, D.C. They already share the same library, and court personnel share the same dining facilities. The Court of Claims trial judges (who become judges of the new United States Claims Court) are also located in this building. Furthermore, there is already a standing order of the Judicial Conference allowing the interchange of judges between the two courts.[14]

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[9] Written statement of Erwin N. Griswold, former Solicitor General (May 7, 1979) 7; written statement of Professor Paul D. Carrington (May 9, 1979) 2.

[10] For example, the Temporary Emergency Court of Appeals, Pub. L. No. 92-210, and the United States Foreign Intelligence Surveillance Court, 50 U.S.C. 1801 *et seq.*

[11] Written statement of Marie Driscoll on behalf of the United States Trademark Association (May 7, 1979) 2–6; written statement of Judge Henry J. Friendly (June 18, 1979) 35.

[12] Oral statement of Chief Judge Daniel M. Friedman (May 7, 1979).

[13] 125 *Cong. Rec.* H911 (daily ed., Feb. 27, 1979).

Indeed, the creation of a single new appellate entity through a merger of these courts has considerable advantages in terms of basic efficiencies and economics. The Court of Claims and the Court of Customs and Patent Appeals were historically justified at the time they were created, and those courts have performed well with the cases that have been assigned to them through the years. But the merger of these two courts reduces overlapping functions and provides for more efficient court administration. For example, there should be considerable savings through the maintenance of one clerk's office instead of two.

At the same time, the consolidation of the two courts brings them administratively into the mainstream of the federal judiciary and upgrades the status of their judges and functions. Although both courts participate in the Judicial Conference[15] and are among the courts within the jurisdiction of the Administrative Office of the United States Courts,[16] their integration into the judicial budgetary and administrative process has been far from total. On budgetary matters, for example, the proposed budgets for the two courts are routed to the Office of Management and Budget through the Administrative Office, along with the proposed budgets for the district and circuit courts; but, unlike the other courts that are serviced by the Administrative Office, representatives of each of these courts appear directly before the appropriation committees of the Congress to justify their budget requests, in much the same fashion as the Supreme Court. Whatever the historical reason for this practice, there is little justification today for having two courts (other than the Supreme Court) out of the entire Federal judiciary appear separately to explain their budgetary submissions. The merger of the two courts would permit them to be fully integrated into the budgetary process. Thus, merging these two courts into a single court, as a regularized part of the intermediate appellate tier, would assure more effective and rational administration of the Federal judiciary as a whole.

The establishment of the Court of Appeals for the Federal Circuit also provides a forum that will increase doctrinal stability in the field of patent law. Based on the evidence it had compiled, the Hruska Commission singled out patent law as an area in which the application of the law to the facts of a case often produces different outcomes in different courtrooms in substantially similar cases.[17] Furthermore, in a Commission survey of practitioners, the patent bar indicated that uncertainty created by the lack of national law precedent

[14] *See*, Report of the Proceedings of the Judicial Conference of the United States, September 23–24, 1976, at 53.
[15] 28 U.S.C. 331.
[16] 28 U.S.C. 610.
[17] Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, 15, 144–57, reprinted at 67 F.R.D. 195, 214, 361–76 (1975) [hereinafter cited as Commission].

was a significant problem, and the Commission singled out patent law as an area in which widespread forum-shopping is particularly acute.[18]

Although the proposal to centralize patent appeals in a single court is not without its critics, the issue was amply addressed in the hearings held earlier this year on S. 677 and S. 678. The great weight of the testimony, which included statements from distinguished jurists, patent practitioners, and representatives of major technologically-oriented business enterprises, confirmed the findings of the Hruska Commission that patent cases are inconsistently adjudicated. The testimony received by the committee also supported the basic objective of providing for uniformity of doctrinal development in the patent area. The committee found particularly persuasive the testimony of the users of the patent system. For example, Industrial Research Institute is a private, non-profit corporation with a membership of approximately 250 industrial companies that conduct a major portion of the industrial research and development carried on in the United States. It polled its membership and found them overwhelmingly in favor of centralizing patent appeals in a single court.[19]

The creation of the Court of Appeals for the Federal Circuit will produce desirable uniformity in this area of the law. Such uniformity will reduce the forum-shopping that is common to patent litigation. The Hruska Commission's patent law consultants, James B. Gambrell and Donald R. Dunner, concluded that forum-shopping on the scale that occurs in patent law increases the cost of litigation and "demeans the entire judicial process and the patent system as well." [20] Removing the incentive to forum-shop thus will reduce costs to litigants and will also be a positive improvement from the standpoint of the judicial system. Moreover, as the new court brings uniformity to this field of law, the number of appeals resulting from attempts to obtain different rulings on disputed legal points can be expected to decrease.

Likewise, uniformity in the law will be a significant improvement from the standpoint of the businesses that rely on the patent system. Business planning will become easier as more stable and predictable law is introduced. This can have important ramifications upon our economy as a whole. For example, Harry F. Manbeck, Jr., General Patent Counsel of the General Electric Company, testified that stability in the patent law has an effect on technological innovation:

> Patents, in my judgment, are a stimulus to the innovative process, which includes not only investment in research and development but also a far greater investment in facilities for producing and distributing the goods. Certainly, it is important to those who must make these investment decisions that we decrease unnecessary uncertainties in the patent system.[21]

While the suggestion has been made that this objective might be accomplished simply by expanding the jurisdiction of the CCPA, the committee rejected such an approach as being inconsistent with the imperative of avoiding undue specialization within the Federal judicial system. Consequently, the Act adheres to the original philosophy of S. 677 and S. 678 which, in the words of Judge Jon O. Newman, represents "a sensible accommodation of the usual preference for generalist judges and the selective benefit of expertise in highly specialized and technical areas." [22]

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[18] *Id.* at 144–157, 67 F.R.D. at 361–76.

[19] Written statement of Richard C. Witte, Chief Patent Counsel for the Procter and Gamble Company, on behalf of the Industrial Research Institute, Inc. (May 7, 1979).

[20] Commission, *supra*, at 152, 67 F.R.D. at 370. Mr. Dunner, who is now in private practice, testified in favor of the Court of Appeals for the Federal Circuit. See written statement of Donald R. Dunner (May 7, 1979).

[21] Written statement of Harry F. Manbeck, Jr., General Patent Counsel of the General Electric Company (May 7, 1979) 2; see also, written statement of Donald R. Dunner (May 7, 1979) 7–9.

The Court of Appeals for the Federal Circuit will not be a "specialized court," as that term is normally used. The court's jurisdiction will not be limited to one type of case, or even to two or three types of cases. Rather, it will have a varied docket spanning a broad range of legal issues and types of cases. It will handle all patent appeals, plus government claims cases and all other appellate matters that are now considered by the CCPA or the Court of Claims—cases which contain a wide variety of issues.

This rich docket assures that the work of the proposed court will be broad and diverse and not narrowly specialized. The judges will have no lack of exposure to a broad variety of legal problems. Moreover, the subject matter of the new court will be sufficiently mixed to prevent any special interest from dominating it.

It is important that the docket of the new court be not only varied but also manageable. An analysis of the proposed workload discloses that a merger of the courts will produce a reasonable caseload. The dockets of both existing courts are current. Set out below are tables showing the sources of cases for the proposed court.

CASELOAD IN THE COURT OF CUSTOMS AND PATENT APPEALS, FISCAL YEAR 1978

Type of case	Filed	Terminated
Customs, commerce, and international trade	20	26
Patent and trademarks	133	173
Total CCPA cases	153	199

The docketing of cases in the Court of Claims presents a confusing statistical picture to the uninitiated. Some cases appear on the trial judges' docket and others' appear on the docket of the article III judges, while some cases are placed on both dockets. For purposes of projecting the new court's caseload, the relevant statistics are not those that reveal the total caseload of the Court of Claims but rather those that reflect the caseload of the article III judges on the Court. The following table contains those figures.

Appellate caseload in the Court of Claims, fiscal year 1978

Total dispositions by article III judges:	
In chambers	150
Calendar	151
Requests for review	50
Total article III judge workload	351

In addition to inheriting the jurisdiction of the CCPA and of the Court of Claims, the new appellate court will also receive all patent appeals and all appeals in federal contract cases brought against the United States that are presently heard in the regional courts of ap-

[22] Written statement of Judge Jon O. Newman (March 20, 1979) 8.

peals. On the basis of 1978 figures, the new court will handle approximately 153 cases that otherwise would have been heard by the CCPA, 351 cases that would have been heard by the Court of Claims, and 372 patent or federal contract cases coming directly from the district courts that would have been heard by the regional courts of appeals. This will provide an adequate but not burdensome workload for a court of twelve judges.

Although the workload per judgeship will be lighter here than in the other circuits, a reduced number of appeals is desirable for this court. The Court of Appeals for the Federal Circuit will be considering cases that are unusually complex and technical. Consequently, its cases will be extraordinarily time-consuming, and fewer of them will be appropriate for summary disposition than is true of the cases that make up the dockets of the regional courts of appeals. In addition, for at least two reasons, it is important that a newly created court with nationwide jurisdiction not be initially overloaded. First, because decisions of this court will have precedential effect throughout the country, it is important for the judges of the court to have adequate time for thorough discussion and deliberation. Second, because a major purpose of this bill is to create a forum to which Congress can route cases where there is a felt need for uniformity in the national law, it is important for the new court to retain some flexibility in its docket so that there is capacity available when the Congress seeks to use it in the future.

In summary, the consolidation of the Court of Claims and the Court of Customs and Patent Appeals is desirable. It is logistically feasible. Indeed, it makes maximum use of facilities and personnel that are already a part of the federal system. As Chief Judge Frank M. Coffin noted, the proposal "has the merit of avoiding any net increase in courts."[23] Thus, the bill makes only a modest change in federal appellate court structure. It does, however, create a permanent forum that is capable of exercising nationwide jurisdiction of appeals in categories of cases where there have been special problems of inconsistency in the law. It also provides for increased stability in the patent law by channelling appeals in those cases to a single forum.

United States Claims Court.—The bill also creates a new article I trial forum known as the United States Claims Court. The Claims Court inherits substantially all the trial jurisdiction of the Court of Claims, which under present practice is exercised largely by the commissioners of that court. The Court is composed of sixteen article I judges who will be appointed by the President, with the advice and consent of the Senate, for a term of fifteen years. As a transitional measure, persons who were in active service as trial judges of the Court of Claims on the effective date of the Act become article I judges of the Claims Court. Like the present Court of Claims and the Tax Court, the Claims Court is authorized to sit nationwide. In organization and procedure it resembles the United States Tax Court.

Changes in the existing structure of the Court of Claims have been advocated by practitioners with extensive experience before the court

[23] Written statement of Judge Frank M. Coffin (March 20, 1979) 9.

and by the commissioners themselves.[24] The establishment of the Claims Court accomplishes a much needed reorganization of the current system by assigning the trial function of the court to trial judges whose status is upgraded and who are truly independent. Presently, the commissioners of the Court of Claims are appointed by the article III judges of that court and do not have the power to enter dispositive orders; final judgment in a case must be made by the article III judges after reviewing findings of fact and recommendations of law submitted by a commissioner. The creation of the United States Claims Court will reduce delay in individual cases and will produce greater efficiencies in the handling of the court's docket by eliminating some of the overlapping work that has occurred as a result of this process.

TITLE IV—TAX APPELLATE STRUCTURE

COMMITTEE NOTE: S. 1477, as reported by the Committee on the Judiciary, contains provisions creating a new tax appellate structure. Since it is anticipated that these provisions will be sequentially referred in a separate bill to the Senate Finance Committee, they are retained in S. 1477, as reported, solely for the purpose of providing a comprehensive overview of the entire court reform package.

S. 1477 provides for the creation of a new United States Court of Tax Appeals, a tribunal at the same level as the existing Federal circuit courts of appeals. This new court would have exclusive intermediate appellate jurisdiction over all civil tax appeals.

As introduced, the bill provided for a court of twelve judges to be designated by the Chief Justice for staggered three-year terms from among the current courts of appeals judges. The bill also provided that the judges would normally hear argument in panels of three and would sit throughout the various circuits; when any six judges of the court agreed that it was warranted, the court would sit en banc. S. 678 would have also eliminated all tax jurisdiction from the existing Court of Claims.

For more than forty years the inadequacies of the present civil tax appellate system have been criticized and debated.[25] Yet, until now, little has been done to deal with these inadequacies. Under the present system, a taxpayer usually has a choice of three trial forums in which to litigate a tax issue—the United States Tax Court, the United States Court of Claims, or the appropriate United States district court. Decisions of the Tax Court and district courts can then be appealed to one of the eleven United States circuit courts of appeals. There is then the possibility—rather remote—that the case will be heard by the United States Supreme Court. Court of Claims decisions are appealable only to the Supreme Court itself.

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[24] Written statement of Thomas M. Gittings, Jr., Chairman, Court of Claims Committee of the Bar Association of the District of Columbia (May 9, 1979); written statement of Chief Judge Daniel M. Friedman (May 9, 1979) 14–16.

[25] See, e.g., Traynor, "Administrative and Judicial Procedure for Federal Income, Estate and Gift Taxes—a Criticism and a Proposal," 38 Colum. L. Rev. 1393 (1938); Surrey, "Some Suggested Topics in the Field of Tax Administration," 25 Wash. U.L.Q. 399 (1940); Griswold, "The Need for a Court of Tax Appeals," 57 Harv. L. Rev. 1153 (1944). The debate has not diminished in recent years. See e.g., Miller, "A Court of Tax Appeals Revisited," 85 Yale L. J. 228" (1975); Caplin and Brown, "A New United States Court of Tax Appeals: S. 678," 57 Taxes: The Tax Magazine, 360 (June 1979).

The committee recognizes that the real problem in today's system of tax litigation is the long period of uncertainty engendered by delay in getting a final decision on a particular tax issue. Current law—determined in various forums and subject to disparate appellate consideration—lacks a practical and reliable method of authoritatively resolving tax questions. In addition, as Judge Friendly and others pointed out during the hearings, current tax law is so complex and requires such special understanding that resolution of tax issues should be better left to a central tribunal established for that purpose alone. To Judge Friendly and other authorities tax cases are a luxury which the existing Federal appellate courts—already confronted with mushrooming dockets—can no longer afford.[26] Under the current system the likelihood of unfairness and delay is obvious: not only may the taxpayer wait many years without a final determination of the issue in question, but taxpayers whose circumstances are in all other respects identical may lawfully pay different amounts of tax solely because they are residents of different circuits. The overall logic and fairness of our tax system is brought into question. Inconsistency and lack of certainty place a heavy burden on the administrative process through which the vast majority of tax disputes are settled.

To solve the problems surrounding the resolution of civil tax issues, S. 1477 proposes two major changes in present law:

1. The creation of a United States Court of Tax Appeals with exclusive jurisdiction over civil tax appeals from the district court and the Tax Court; and
2. The elimination of Court of Claims jurisdiction over tax cases.

By virtue of these changes, all civil tax cases would be initiated in either the United States Tax Court or district courts and all civil tax appeals would be heard by the newly created Court of Tax Appeals. Although the decisions of the new court would be subject to review by the Supreme Court on certiorari, it is anticipated that such review would be a rare occurrence.[27] For all practical purposes, the new Court of Tax Appeals would become the final authority in the judicial interpretation of the Federal internal revenue laws.

In endorsing this new court, the committee has concluded that the following benefits will result from the proposal:

1. Speedier, more definitive resolution of complex tax issues.
2. A small but important reduction in the existing caseload of the Federal courts of appeals.
3. Less burden on the Supreme Court to resolve tax conflicts among the circuits.

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[26] H. Friendly, *Federal Jurisdiction: A General View*, 153 et seq. (1973).

[27] U.S. Supreme Court review of tax cases is a rare occurrence under existing law.

The following Supreme Court statistics were obtained from the Appellate Section of the Tax Division of the Department of Justice. The term "petitions" likely includes a very small number of direct appeals:

(Continued)

4. A reduction in trial level litigation and IRS administrative proceedings as the new, centralized court issues definitive decisions binding on all the trial courts.

5. Creation of a new court well versed in the complexities of tax law.

During the course of committee hearings various witnesses testified concerning the strengths and limitations of the tax court proposal. Wide ranging support for the new court was voiced throughout the hearings. Former Solicitor General Erwin Griswold—considered by many the father of the concept of a centralized court of tax appeals—was joined by members of the Federal judiciary, representatives of the Internal Revenue Service and Department of the Treasury, and, perhaps most importantly, private tax practitioners, in supporting the need for a centralized court of tax appeals. Indeed, with very few exceptions, the witnesses were enthusiastic in their support of the proposal. The committee notes that, because of the structure and organization of the proposed new court, it enjoys the type of broad, bipartisan support that previous tax court proposals often lacked.

The committee hastens to add that the proposal needed further improvement. A panel of former IRS Commissioners, while endorsing

(Contin''ed)

	October term	
	1976	1977
1. Cases on merits pending at close of prior term	8	5
2. Petitions pending at close of prior term	27	17
(a) Taxpayer	24	14
(b) Government	3	3
3. Petitions filed during term	111	100
(a) Taxpayer	107	98
(b) Government	4	2
4. Petitions:		
(a) Denied	113	80
(i) Taxpayer	113	80
(ii) Government	0	0
(b) Granted	8	11
(i) Taxpayer	4	6
(ii) Government	4	5
5. Cases decided	10	11
(a) Taxpayer	6	3
(b) Government	4	8
6. Cases pending on merits at end of term	5	5
7. Petitions pending at end of term	17	26
(a) Taxpayer	14	26
(b) Government	3	0

the proposal, urged that certain modifications be made. Similarly, the tax section of the New York State Bar Association and the Bar Association of the City of New York—representing the practicing tax bar—endorsed the proposal but also expressed reservations with certain sections. The committee took into account the suggestions of these and other witnesses and modified the bill accordingly.

The major issues raised during the course of Senate hearings concerned the composition of the proposed court and the selection of its members. S. 678, as introduced, would have established an article III court to be composed of twelve judges chosen by the Chief Justice from among those circuit judges already sitting on other Federal courts of appeals. After a transitional period designed to stagger vacancies, the twelve judges would have served for three-year terms. The Chief Justice would also have been empowered to designate judges currently sitting on the district courts or the Tax Court to serve temporarily on the new court. Sessions of the court would have been held in each of the circuits at least once a year and more often as the court's workload required. Current estimates are that, initially, between 400 and 500 cases a year would be handled by the new court.[28]

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[28] The following statistics demonstrate the number and nature of tax appeals during the past four years:

Tax cases filed and opinions issued 1975 to present—Court of Claims

I. New tax cases filed:	
July 1, 1974 to June 30, 1975	140
July 1, 1975 to June 30, 1976	157
July 1, 1976 to Sept. 30, 1976	39
Oct. 1, 1976 to Sept. 30, 1977	320
Oct. 1, 1977 to Sept. 30, 1978	205
Oct. 1, 1978 to Apr. 1, 1979	62
II. Opinions in tax cases (does not include dispositive orders):	
1975	19
1976	25
1977	33
1978	33
Jan. 1 to Apr. 18, 1979	11

Appeals from a judgment of a district court

Fiscal year [29]	Government appeals	Taxpayer appeals	Total	Adjusted total [30]
1975	117	227	344	299
1976	106	220	326	283
Transitional quarter	0	5	5	4
1977	111	242	353	307
1978	205	392	597	519
(6 mo) 1979	111	134	245	213

Appeals from a decision of the tax court

Fiscal year [29]	Government appeals	Taxpayer appeals	Total	Adjusted total [30]
1975	25	262	287	250
1976	33	276	309	259
Transitional quarter	0	9	9	8
1977	44	300	344	299
1978	23	227	250	217
1979 (6 mo)	19	137	156	136

[29] July 1 to June 30 for 1975–76; Oct. 1 to Sept. 30 for 1977 and thereafter.

[30] The statistical source for the figures in this report reflects taxpayer-litigants rather than an actual case load. Since a court case may involve several such taxpayer-litigants, the committee has provided this adjusted total which converts taxpayers to cases, based on a conversion factor of 87 percent arrived at by a small sampling on an actual count. It is at best a rough adjustment and may well be wide of the mark but the result is probably a more accurate picture of actual caseload than the raw statistical figures.

The committee notes that the scheme underlying the structure and composition of the new court was designed with two purposes in mind—to assure that the new court would not be viewed as a "tax specialty" court headquartered in Washington and that the court would not be labeled a permanent court requiring the nomination and confirmation of additional article III judges just one year after the passage of the Omnibus Judgeship Act creating 152 new Federal judgeship vacancies. The bill is designed to provide for the reassignment of judges already sitting and focuses on the need to avoid the creation of a new "specialist" court out of touch with other general areas of law. The committee further notes that these two concerns—a permanent Washington-based court and a specialty court consisting solely of tax experts—have largely been responsible for the failure of previous proposals. The proposal to assign sitting circuit court judges to the new court for terms of three years is, in the view of the committee, a wise attempt to avoid the passions and pitfalls of past debate. By virtue of their concurrent service on the Federal circuit courts, each judge selected will have a generalist background. Moreover, depending on the new court's workload, the judges may be able to continue to participate in other types of cases in their home circuits during the three-year period they serve on the new tax court. At the same time, judges appointed to the new court will have the opportunity to develop a special understanding and appreciation of tax law issues. The committee views the tax court proposal in S. 1477 as a balanced proposal designed to deal with the problems which plague the development of a consistent body of tax law while assuring that the problems' will be dealt with by a truly national court consisting of generalist judges.

The committee has heard extensive, detailed testimony on all aspects of the S. 1477 proposal. In an effort to assure that the new court meets the intent of the drafters and effectively deals with problems raised during the course of the hearings, certain modifications have been made to the original proposal:

1. *Geographic distribution of appointments.*—The committee adopts the recommendation of the Tax Section of the New York State Bar Association urging that the bill be amended to reduce the number of judges comprising the new tax court from twelve to eleven and providing that at least one judge from each of the eleven judicial circuits be a member of the Court of Tax Appeals at all times. This amendment is designed to assure that the new court will truly be national in scope. In the event that the Chief Justice is unable to designate a circuit judge for the new court—such as in the case where no circuit judge desires to serve on the tax court—the bill has been amended to allow for the designation of a district court judge of that circuit.

2. *Concurrent appointments.*—To make clear that judges of the new tax court need not relinquish their current status as Federal circuit court judges, the bill is amended expressly to provide that a judge appointed to the Court of Tax Appeals will continue to remain a judge of the circuit from which he was appointed. The judge's primary duties will be to the Court of Tax Appeals but workload requirements will determine

precisely how much time can realistically be spent on each court.

3. *Location of the court.*—Again, to assure a truly national Court of Tax Appeals, S. 1477 is amended to provide that any appeal from a lower court decision in a civil tax case will normally be heard by the Court of Tax Appeals in the judicial circuit in which the taxpayer is domiciled or, if the taxpayer is a corporation or other association, has its principal place of business or, in the case of a cooperative or an organization claiming tax exemption, its principal place of activity.

4. *Selection of judges.*—Designation of judges to get on the new tax court will be made by the Chief Justice. The bill would mandate that one judge be chosen from each of the eleven circuits, thus reducing the number of judges on the new tax court from twelve to eleven. S. 678, as introduced, provided that the Chief Justice of the United States would appoint the circuit judges. The subcommittee, however, when considering this provision, concluded that a more pluralistic court, representing various views and opinions, would be assured if the chief judge of each circuit designated a circuit judge for the tax court. Upon further reflection, the full committee has opted for the original approach of allowing the Chief Justice to select the members of the new court. Recognizing that the issue can be resolved either way, it is the view of the committee that designation by the Chief Justice will assure that the most competent and capable judges will be chosen for this important assignment.

5. *Judges sitting by designation.*—Although the committee believes that the provision of S. 678 allowing for the temporary designation of district judges to sit on the new tax court is sound, the same cannot be said for the designation of Tax Court judges. The latter designation raises serious constitutional questions since the Tax Court has been established under article I of the Constitution rather than under article III. In order to eliminate the possibility of any controversy surrounding designation, the committee has struck the provision in S. 1477 permitting judges of the Tax Court to sit by designation on the Court of Tax Appeals.

6. *En Banc Rehearing.*—The most frequent criticism leveled at the proposed new court during the hearings concerned the fear by some witnesses that a central court of tax appeals would stifle the benefits flowing from successive consideration of the same tax issue by different circuits. For example, during the course of the committee hearings, Assistant Attorney General M. Carr Ferguson noted that:

> Part of the genius of our system of circuit appellate courts is the opportunity for reconsideration of an issue already decided by one circuit by another appellate court free of the constraints of the doctrine of *stare decisis*. This opportunity for an issue to be ventilated in more than one circuit seems to me espe-

> cially important in tax cases. The first appellate review of a tax issue may be shortsighted, distorted by the particular record or omission of an argument, or simply mistaken.[31]

According to this argument, such "ventilation" of tax issues is a valuable benefit of the current system—to be preserved even at the price of some interim uncertainty. Although the committee respects this view, it is inclined to agree with the majority of witnesses who testified during the hearings that such a consideration pales before the needs of certainty and finality. For example, former Solicitor General Griswold noted that:

> The result is continuing uncertainty, encouragement to litigation, and a premium on continued litigation. I am sure that the burden on the courts in this country would be considerably reduced if we only had a system which would enable lawyers, both private and public, and judges of the lower courts, to know somewhat more definitely than is now the case what the law is.[32]

And Mortimer Caplin, a former Commissioner of the Internal Revenue Service, testified that:

> To increase the likelihood of reaching correct decisions, an appellate system which provides for particularly well-qualified judges to decide the issues at hand seems preferable to one which relies mainly upon successive decisions by different panels.[33]

Nevertheless, the committee believes that steps should be taken to assure that the first decision of the new tax court concerning a particular tax matter not preclude further evolution and modification of the issue at hand. Accordingly, the committee believes that S. 1477 should encourage the practice of *en banc* rehearing by providing specific machinery for initiating such rehearing. The bill specifically provides some of the factors to be taken into account in deciding whether or not to endorse a petition for rehearing in a particular case. These factors—which are not exhaustive—include:

> . . . whether the question presented in the case was thought to be novel and unlikely to recur or was likely to apply to many taxpayers;
>
> . . . whether there has or has not been unanimity in the panel which decided the case;
>
> . . . whether any of the judges who composed the panel which heard the case have suggested that it be reheard;
>
> . . . whether the case presents issues of first impression.

[31] Written Statement of M. Carr Ferguson, Assistant Attorney General, Tax Division (May 7, 1979), p. 8.
[32] Written statement of Erwin N. Griswold (May 7, 1979), p. 5.
[33] Written Statement of Mortimer Caplin (May 10, 1979), p. 16.

Titles V and VI

Title V of the bill makes technical and conforming amendments outside of title 28 relating to the United States Court of Appeals for the Federal Circuit and the United States Court of Tax Appeals.

Title VI contains two sections, the first of which sets the general effective date of the bill as two years after the enactment date. The second provision addresses the issue of the effect of this bill on pending cases.

REGULATORY IMPACT EVALUATION

In compliance with Rule 29.5 of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact as defined by that subsection will result from the enactment of S. 1477.

CHANGES IN EXISTING LAW

In the opinion of the Committee on the Judiciary, it is necessary in order to expedite the business of the Senate to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing laws made by the bill, as reported).

Cost Estimate of Congressional Budget Office

A cost estimate of the Congressional Budget Office is on request but was not available at the time of this report.

SECTION-BY-SECTION ANALYSIS

Title I—Governance and Administration of the Federal Courts

chief judge tenure

Sections 101–103

Under current law, the person who serves as chief judge of a Federal court of appeals or a district court is the judge who is most senior in commission. The chief judge may hold office until age 70. As a result, a judge who becomes chief judge of a Federal court at age 50 may serve as chief judge for twenty years, while a judge who becomes chief judge at age 69 will serve for only one year.

A statute that bases the chief judgeship position solely on seniority, without a minimum or maximum term, produces two potential difficulties: it may require the retention for decades of a chief judge who may or may not have the interest or ability to be an enthusiastic administrator; at the same time, it requires rapid rotation among chief judges when the consecutive incumbents take office at an advanced age, thereby creating instability in the chief administrative office of the court. In recent history, this provision has resulted in the anomalous situation that one Federal court had a chief judge who served for seventeen years, while another Federal court had three chief judges within two years.

Sections 101–103 resolve this problem by amending 28 U.S.C. 45 and 136 to set a maximum term of office for chief judges of seven years and to permit no one to become a chief judge of a district or circuit court after reaching age 65. However, once becoming a chief judge prior to age 65, a chief judge could serve for seven years, or until reaching the age of 70. These provisions insure a constant seven year term for the chief judge unless death, resignation or retirement shortens the term. These amendments also provide for the continuation of a judge's service as chief judge after the expiration of his seven year term until another judge is qualified to serve in that capacity.

The sections also provide for the situation in which no judge meets the statutory requirements for the chief judgeship. In such a case, the most senior active judge would preside until some other judge became eligible.

As a transitional measure, the section also contains a provision that continues the present system for one year after the effective date of the bill. Moreover, the bill would not apply to anyone who was a chief judge on the date it becomes effective.

PRECEDENCE AND COMPOSITION OF PANEL

Section 111

Under current law the presiding judge of a three-judge panel of a court of appeals is the judge who is senior in commission, unless the chief judge or a circuit justice is a member of the panel. This policy permits senior judges and judges from other circuits to be the presiding judge of a panel and to assign opinions. In order to insure greater stability in the law of the circuit, section 111 amends 28 U.S.C. 45(b) to require that the presiding judge be a judge of that circuit in regular active service.

Section 112

Current law permits a panel of a Federal appellate court to be composed of any combination of active, senior, designated, or district court Federal judges. With a substantial number of judges sitting by designation from outside the circuit, and with district judges sitting regularly on the courts of appeals, it is not infrequent that there is only one active circuit judge on a panel. Such a situation leads to instability in circuit law because district court and court of appeals judges from outside the circuit may not know or may not feel bound by the law of that circuit. This section amends 28 U.S.C. 46(b) to require that each appellate panel have a majority of judges from the circuit court of that circuit. This provision would provide greater stability and predictability in the law being applied in any given area of the country. However, the bill does provide for an exception from the majority requirement when it is impossible to constitute a panel of a court of appeals composed of a majority of judges of that court because of judicial recusal or disqualification. For example, if all the judges of a court of appeals were disqualified under 28 U.S.C. § 455 (1976), it is essential that the chief justice retain the authority to designate and assign judges from other circuits in accordance with 28 U.S.C. § 291(a) (1976) or 28 U.S.C. § 292(e) (1976) to hear the case.

Current law permits appellate courts to sit in panels of less than three. As a result, some Federal appellate courts have used panels of two judges for motions and for disposition in cases in which no oral argument is permitted because the case is classified as insubstantial. Because of apprehensions that decisions at the appellate level by fewer than three judges carry the risk of being less sound or less balanced, there is a widespread belief that every decision of an appeal should be the collective product of at least three minds. The bill amends 28 U.S.C. 46 (b) and (c) to require that all decisions be reached by at least three judges. Moreover, the bill provides the appellate courts with the flexibility to experiment with panels of more than three judges but less than a full en banc court when larger panels are deemed desirable.

JUDICIAL COUNCILS

Section 121

Section 121(a) governs the makeup of judicial councils. For the first time, it is provided that district court judges will be members of the council. The exact number of members and their method of selection is left to the judges of the various circuits. However, it is specifically provided that if the number of court of appeals judges is six or less, then the number of district court judges shall be no less than two. If the number of court of appeals judges is six or more, the number of district court judges may be no less than three. Members will serve for terms established by a majority vote of all judges of the circuit in regular active status.

The council is officially designated as the Judicial Council of the circuit.

The chief judge is required to submit the semiannual reports of the Director of the Administrative Office of the United States Courts to the council for such action as it may take.

The judicial council is empowered to make all necessary and appropriate orders for the effective and expeditious administration of justice within a circuit, hold hearings, take sworn testimony and issue subpoenas.

Subsection (b) adds a new subsection (g) to 28 U.S.C. 332 providing that the judicial council of the newly created Federal Circuit shall consist of all judges of the Court of Appeals for the Federal Circuit in regular active service and the chief judges of the United State Customs Court and the United States Claims Court. Subsection (g) also provides that there will be no circuit executive in the newly created Federal judicial circuit. The committee anticipates that in this small circuit the appointment of a circuit executive would be unnecessary. The court of appeals for the Federal judicial circuit can rely on its clerk of court and the Director of the Administrative Office for any necessary services. Neither the Court of Claims nor the Court of Customs and Patent Appeals has a circuit executive. Finally, this subsection clarifies that sections 332 and 333, concerning judicial conferences of the circuits, judicial councils of the circuits, and the appointment of circuit executives, do not apply to the United States Court of Tax Appeals. Each judge of this court will continue to be a judge of a court of appeals for a geographical circuit. The committee believes it would be unwise to burden these judges with additional and unnecessary administrative responsibilities.

Section 122 amends section 3006A(h)(2)(A) of title 18 of the United States Code by providing for the appointment of Federal

Public Defenders by the Court of Appeals rather than the judicial council. This is a technical amendment necessitated by the addition of district court judges to the judicial council, thus foreclosing the use of the legal fiction that councils are just the administrative extension of the court of appeals. Clause 2 in section 2 of United States Constitution Article II provides that Congress can vest the power to appoint inferior officers only in the President alone, the heads of [Executive] Departments, and the Courts of Law. Since Federal Public Defenders possess significant authority and exercise that authority generally without review by other officers of the Federal Government, it is essential that each defender be an "inferior officer" as distinguished from an "employee." *See* 5 U.S.C. §§ 2104, 2105 (1976).

RETIREMENT AND PENSIONS

Section 131

Section 131 conforms sections (a) and (b) of 28 U.S.C. 371 to provide the same standard for judicial resignation or retirement. A judge must now meet the criteria of having attained age 65 with fifteen years of service or age 70 with ten years of service, to be entitled to retire or resign at the salary of the office.

Section 132

The Federal judiciary includes a large number of capable and talented people whose skills, from time to time, may be needed in the executive branch. During recent years, several Federal judges have left the bench to serve in significant positions in the executive branch. Article III judges who resign or retire before the time limitations described in current 28 U.S.C. 371 give up a lifetime salary mandated by the Constitution, even though they had not been able to accrue funded pension benefits for these years of Federal service under the civil service program. As a result, for these former Federal judges, the acceptance of an executive branch position leaves them with potentially serious financial consequences.

Section 132 amends 5 U.S.C. 8332 to restate existing law that permits years of service on the Federal bench to be counted in computing civil service retirement benefits and amends 5 U.S.C. 8334 to allow the Administrative Office of the United States Courts to pay a deposit into the civil service retirement fund for Federal judges who resign to accept executive branch positions. These deposits will insure that these employees receive civil service pensions that take account of the years that such persons had served as Federal judges. The resulting pensions will still be considerably less than the salaries the judges would have received by remaining on the bench; nonetheless, this provision should help alleviate financial distress and would recognize the value of their years of judicial service. Although the annuity the Gov- will pay to the resigned judge after his executive branch service will constitute taxable income to him, the amendments this section makes ensure that the lump-sum deposit the Administrative Office makes to the Civil Service Retirement and Disability Fund will not constitute income in the year the deposit is paid. Such a consequence would distort the official's income and potentially subject him to unnecessary adverse income tax consequences.

TEMPORARY ASSIGNMENT OF JUSTICES AND JUDGES

Section 141

Section 141 authorizes an active or retired justice or judge of the United States to be assigned temporarily to the position of Administrative Assistant to the Chief Justice, Director of the Administrative Office of the United States Courts, or Director of the Federal Judicial Center, such service to be without any additional compensation.

Upon the appointment of an active judge to one of these positions, the President, by and with the advice and consent of the Senate, shall appoint a successor to fill the vacancy created by the temporary assignment. After the appointment of a successor, any further vacancy created by the death, resignation, or retirement of the judge who is temporarily assigned shall not be filled. If the judge temporarily assigned resumes active service, the first vacancy created on such court after his return to active service shall not be filled if a successor had been appointed and confirmed to fill the vacancy created by the temporary assignment.

The official station of any judge assigned a temporary position is the District of Columbia for the duration of his temporary assignment.

A judge who was in active service at the time of his temporary assignment may either resume his active service upon vacating his temporary assignment or assume active service as a judge in the circuit of the District of Columbia. For purposes of seniority and precedence, a judge who resumes active service on the original court shall be considered to have been in continuous active service as a judge of that court.

RULES OF PRACTICE

Section 151

Section 151(a) adds a new section 2077 to title 28 providing that rules for the conduct of business of each court of appeals, including the operating procedures of such court, shall be published.

Subsection (b) also requires that advisory committees be appointed to make recommendations to each court of appeals concerning its rules and internal operating procedures. It also requires the publication of these rules. The composition of these advisory committees is left for each court of appeals to determine. The use of these committees to assist the courts in developing their rules provides a means for the court to take into account the concerns of the bar and the public. Such committees will also provide a useful means of increasing the understanding of the bar and the public concerning the functioning of the courts. Although persons who serve on the advisory committees will receive no compensation for their services, except an individual who is otherwise an employee of the Government of the United States, the Director of the Administrative Office, in accordance with his travel regulations, may pay such persons travel expenses. In accordance with 5 U.S.C. § 5703 (1976), these expenses will include transportation expenses and a per diem in lieu of subsistence, or actual subsistence expenses under 5 U.S.C. § 5702(c), whenever the person is away from his home or regular place of business. Such committees will not require charters inasmuch as the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972), applies only to the executive branch.

TITLE II—JURISDICTION AND PROCEDURE

INTERLOCUTORY APPEALS

Section 201

Section 201 amends 28 U.S.C. 1292(b) to permit the circuit courts of appeals to entertain appeals from interlocutory orders in civil actions if, after a refusal by a district judge to certify the matter in accordance with the provisions of existing law, the court of appeals determines that an appeal "is required in the interests of justice and because of the extraordinary importance of the case."

TRANSFER OF CASES

Section 211

Because of the complexity of the Federal court system and of special jurisdictional provisions, a civil case may on occasion be mistakenly filed in a court that does not have jurisdiction. By the time the error is discovered, the statute of limitations or a filing period may have expired. Moreover, additional expense is occasioned by having to file the case anew in the proper court.

Section 211 adds a new chapter to title 28 that would authorize the court in which a case is improperly filed to transfer it to a court where subject matter jurisdiction is proper. The case would be treated by the transferee court as though it had been initially filed there on the date on which it was filed in the transferor court. The plaintiff will not have to pay any additional filing fees.

INTEREST

Section 221

Under current law, the interest rate granted on judgments during appeal is based on varying State laws and frequently falls below the contemporary cost of money. As a consequence, a losing defendant may have an economic incentive to appeal a judgment solely in order to retain his money and accumulate interest on it at the commercial rate during the pendency of the appeal.

Section 221 amends 28 U.S.C. 1961 by setting a realistic and nationally uniform rate of interest on judgments in the Federal courts. The provision would tie the postjudgment interest rate to the rate used by the Internal Revenue Service for delinquent taxes under 26 U.S.C. 6621. That rate is a composite of prime rates from throughout the country that is reviewed and revised periodically. Furthermore, by consolidating all the provisions for interest on judgments of Title 28 into this section, this rate becomes uniformly applicable to all litigation in the Federal courts.

There are presently no generally applicable guidelines concerning the award of prejudgment interest by Federal courts. Yet such interest may be essential in order to compensate the plaintiff or to avoid unjust enrichment of the defendant. For instance, a plaintiff who was unlawfully deprived of the use of $20,000 in 1976, and who did not receive a judgment until 1979, could have obtained $4,500 in the three-year intervening period by investing the money at seven percent compounded interest.

Section 221 amends 28 U.S.C. 1961 to permit interest for the prejudgment period to be awarded in cases in which it is necessary to compensate the plaintiff for his losses or to avoid unjust enrichment of the defendant. The award of such interest would be in the discretion of the district judge where the facts of the controversy and the manner in which the case was litigated indicate such an award would be appropriate. It is the view of the Committee that these qualifications on the discretion of the judge will afford the judge adequate flexibility in the award of prejudgment interest while ensuring that prejudgment interest will not be awarded automatically, but only where justified.

The section provides that interest be awarded from the time that the defendant became aware of his liability; if the defendant avoided formal knowledge of his liability, interest would run from the time of avoidance. In no case, however, would prejudgment interest run for more than five years, since even with current civil case backlogs, a delay of more than five years to judgment implies some delay on the part of the plaintiff which should not be rewarded with interest payments. The legislation also provides that interest on losses that do not occur until after judgment (for example, loss of future wages) and interest that would be duplicative of some other award would not be permitted. These provisions for prejudgment interest will serve not only to compensate plaintiffs more fairly but also to provide positive incentives to defendants to settle meritorious claims without delay.

Title III—Appellate Structure for Patent, Trademark, Customs, and Trade Appeals

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Section 301

Section 301(a) amends section 41 of title 28 of the United States Code by creating a twelfth judicial circuit of the United States, the United States Court of Appeals for the Federal Circuit, to review orders and judgments in selected categories of cases. The Federal Judicial Circuit comprehends all 95 judicial districts, including those of courts in the terriories created by Act of Congress which are invested with any jurisdiction of a district court of the United States.

Section 301(b) amends section 44(a) of title 28, United States Code, by authorizing the President, with the advice and consent of the Senate, to appoint twelve judges for the United States Court of Appeals for the Federal Circuit. Tenure, residence, and salary provisions of section 44 that apply to Federal courts of appeals judges apply also to the judges of the Federal circuit, except that judges of that court must reside within fifty miles of the District of Columbia while in active service.

Section 301(c)(1) clarifies the language setting out where regular sessions of the courts of appeals may be held. Subsection (c)(2) designates the District of Columbia as the statutorily-prescribed place where regular sessions of the court of appeals for the Federal circuit shall be held. Subsection (c)(3) allows a court of appeals to hold special sessions at any place within its circuit as the nature of the business may require.

Section 302

As a transitional provision, section 302(a) provides that the judges of the United States Court of Claims and the United States Court of Customs and Patent Appeals on the effective date of the Act will continue in office as judges of the United States Court of Appeals for the Federal Circuit. Senior judges of the present Court of Claims and of the Court of Customs and Patent Appeals will be deemed for all purposes to be senior judges of the Court of Appeals for the Federal Circuit.

As a further transitional provision, section 302(b) provides that the first chief judge of the United States Court of Appeals for the Federal Circuit will be the chief judge of the Court of Claims or the chief judge of the Court of Customs and Patent Appeals, whoever has served longer as chief judge of the respective court. After the first chief judge of the Federal circuit vacates that position, the chief judge will be chosen by seniority of commission, in the manner prescribed for other United States courts of appeals under section 45 of title 28, United States Code.

Sections 302(c), 302(d), and 302(e) are technical amendments providing for the consistent usage of the term "panel" throughout 28 U.S.C. 46.

ESTABLISHMENT OF UNITED STATES CLAIMS COURT

Section 311

Under existing law, chapter 7 of title 28, United States Code, pertains to judges of the Court of Claims. Section 311 of the bill amends this chapter to apply instead to the judges of a newly constituted trial court, which will assume the functions of the trial division of the current Court of Claims. The current trial judges are much like magistrates and are appointed by the Court of Claims. The amended chapter is titled "United States Claims Court," and it provides as follows:

Subsection (a) of section 171 of title 28 authorizes the President to appoint, by and with the advice and consent of the Senate, sixteen judges who will constitute a court of record known as the United States Claims Court. The court will be established under article I of the Constitution of the United States. Because 28 U.S.C. 2509 of existing law gives the trial judges of the Court of Claims jurisdiction to hear congressional reference cases, which are not "cases and controversies" in the constitutional sense, and because the cases heard by the Claims Court are in many ways essentially similar to the limited jurisdiction cases considered by the tax court, judges of the Claims Court are made article I judges rather than article III judges.

Subsection (b) of section 171 of title 28 requires the Claims Court, at least biennially, to designate a judge to act as chief judge. This provision parallels procedure in the United States Tax Court. See 26 U.S.C. 7444(b).

Section 172 of title 28 fixes the tenure of the judges of the United States Claims Court as a term of fifteen years. The section also provides that the salary of the judges be determined under section 225 of the Federal Salary Act of 1967, subject to an annual cost of living adjustment in accordance with the Executive Salary Cost-of-Living Adjustment Act, 28 U.S.C. 461. Salaries of the current Court of Claims commissioners and judges are determined under the Federal Salary Act of 1967.

Section 173 of title 28 authorizes the Claims Court to hold court anywhere within the jurisdiction of the United States, but it requires the court to establish the times and places of its sessions with a view toward minimizing inconveniences and expense to citizens. This latter provision is similar to the statutory requirement that the United States Tax Court set the times and places of its sessions in such a way as to expedite citizen access. See 26 U.S.C. 7446.

Section 174 of title 28 permits the judicial power of the Claims Court to be exercised by a single judge and requires the decisions of the Claims Court to be preserved and open for inspection. These provisions are identical to requirements governing the Customs Court. See 28 U.S.C. 254, 257. Although these will no longer be a published official reporter series, the committee anticipates that legal publishers who currently publish commercially the decisions of the Court of Claims will continue to publish the decisions of the new Claims Court.

Section 175 of title 28 sets the duty station of a judge of the United States Claims Court as the District of Columbia and provides that while in active service judges shall live within fifty miles of the District of Columbia.

Section 176 provides for removal from office of a judge of the Claims Court by a majority of the judges of the judicial council of the Federal judicial circuit.

Section 177 provides that a judge removed from office in this manner may not later practice law before the Claims Court. This provision parallels a similar section in the statute governing the tax court. See 26 U.S.C. 7443(g).

Section 312

Section 312 provides that, as a transitional measure, the persons who on the effective date of the Act are serving as commissioners of the United States Court of Claims will be judges of the United States Claims Court. Their initial terms of office will expire on September 30, 1985, at which time the President shall make appointments to such vacancies as exist in the court, by and with the advice and consent of the Senate. Currently, Congress has invested the United States Claims Court with the power to appoint 16 trial commissioners. 28 U.S.C. 792. Currently, there are 17 trial commissioners, including one re-employed annuitant. Although this one commissioner may be an annuitant, the committee intends that only the 16 commissioners in regular active service be folded in as judges of the Claims Court.

Section 313

Under existing law, chapter 9 of title 28, United States Code, concerns the Court of Customs and Patent Appeals (CCPA). As provided in section 302 of this Act, the judges and functions of the CCPA are transferred to the United States Court of Appeals for the Federal Circuit. The provisions of chapter 9 of title 28 will be no longer necessary since similar provisions found in chapter 3 of title 28 are applicable to the new court. Section 313 of the Act therefore repeals chapter 9 of title 28.

Section 314

Under existing law, section 256(b) of title 28, United States Code, permits the chief judge of the Customs Court to authorize a judge of the court to preside in an evidentiary hearing in a foreign country. The subsection also permits an interlocutory appeal to be taken from such an order, subject to the discretion of the Court of Customs and Patent Appeals. Section 314(a) of the Act provides that the United States Court of Appeals for the Federal Circuit may, in its discretion, consider an interlocutory appeal from such an order.

Under existing law, section 219(b) of title 28, United States Code, authorizes the Chief Justice of the United States to designate and assign temporarily any circuit judge to serve as a judge of the Court of Claims or the Court of Customs and Patent Appeals, if the need arises. Because the Act transfers the judges and functions of these courts to the U.S. Court of Appeals for the Federal Circuit and the United States Claims Court, section 314(b) deletes existing subsection (b). Because the Court of Appeals for the Federal Circuit will be in all respects a United States court of appeals, the Chief Justice will be authorized under section 291(a) to designate a judge of that court to sit temporarily as a circuit judge in another circuit, or to assign temporarily a judge of another circuit to the Court of Appeals for the Federal Circuit.

Section 292(e) of title 28, United States Code, currently authorizes the Chief Justice of the United States to designate and assign temporarily any district judge to serve as a judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court. Section 314(c) of the bill conforms this section to the other changes made by the bill.

Section 293 of title 28, United States Code, currently provides for temporary assignment of a judge from the Court of Claims to the Court of Customs and Patent Appeals or vice versa, and from the Court of Customs and Patent Appeals to the Customs Court or vice versa, and from the Customs Court to a district court. Section 314(d) amends section 293 of title 28 by deleting subsections (a), (c), and (d) which deal with the interchange of judges between the Court of Claims and the Court of Customs and Patent Appeals and between the Customs Court and the Court of Customs and Patent Appeals. The Act retains the provisions of subsections (b) and (e).

Section 314(e) amends section 331 of title 28, United States Code, which deals with the Judicial Conference of the United States, by deleting references to the Court of Claims and the Court of Customs and Patent Appeals. The Court of Appeals for the Federal Circuit is structurally similar to the regional courts of appeals, and, as such, becomes part of the Judicial Conference.

Section 372 of title 28, United States Code, concerns retirement of judges for disability and appointment of a substitute judge upon failure of a disabled judge to retire. Section 314(f) amends this section of the Code by deleting all references to the Court of Claims and the Court of Customs and Patent Appeals. The new appellate court is covered by the retained language.

Section 314(g) repeals section 415 of title 28, United States Code, which concerns distribution of copies of Court of Claims decisions, and amends the analysis at the beginning of chapter 19 of title 28, United States Code, to conform with the changes made by the previous sections. The committee believes that the dissemination of opinions in the publications of "quasi-official" publishers results in adequate distribution of decisions. The discontinuance of the nonessential "official reporter" will result in substantial cost savings to the Government.

Section 314(h) amends section 451 of title 28, United States Code, which defines certain terms used in title 28, by deleting all references to the Court of Claims and the Court of Customs and Patent Appeals. The retained language would cover the Court of Appeals for the Federal Circuit but not the article I Claims Court.

Section 314(i) amends section 456 of title 28, United States Code, concerning travel expenses of justices and judges, to clarify the provisions relating to official duty stations and to update references to obsolete laws. The clarification establishes our official duty stations for Article III judges and ensures that the official duty station will be that place where the Director provides chambers for the judge.

Section 314(j)(1) of the bill adds a new section 460 that makes sections 452 through 459 and section 462 of title 28, United States Code, applicable to the United States Claims Court and to certain territorial courts. These sections deal with general matters and provide that courts shall be deemed always open for certain procedural purposes; judges must take a prescribed oath before performing the duties of office; judges are prohibited from engaging in the practice of law; judges may be disqualified from participation in a proceeding in certain circumstances; records of the courts must be kept in a prescribed manner; relatives of a judge are ineligible for appointment to any office in the court in which the relative is a judge; and judges may administer oaths. Claims Court judges also will receive the same travel allowances as Article III judges.

"460. Application to other courts."

Section 314(k) amends chapter 21 of title 28, U.S.C., by adding a new section 462 concerning court accommodations and providing for necessary space for the Claims Court and the Court of Appeals for the Federal Circuit.

Section 315

Under existing law, suits in the Supreme Court and the Court of Claims are conducted and argued by the Attorney General and the Solicitor General, unless in a particular case the Attorney General directs otherwise. See 28 U.S.A. 518(a). Section 351(a) of the bill amends section 518(a) of title 28, United States Code, by deleting the reference to the Court of Claims and providing for argument by the Attorney General and Solicitor General in suits against the United States in the United States Court of Appeals for the Federal Circuit or in the United States Claims Court, unless the Attorney General directs otherwise.

Under current law, section 520 of title 28, United States Code, concerns transmission of copies of petitions in suits against the United States in the Court of Claims to the affected government department or agency by the Attorney General. Section 315(b)(1) of the Act amends this section by deleting references to the Court of Claims and substituting a reference to suits against the United States in the United States Claims Court or in the United States Court of Appeals for the Federal Circuit. Section 315(b)(2) amends the section heading of section 520 of title 28 to reflect this change.

Section 316

Section 316(a) amends section 610 of title 28, United States Code, which defines "courts" for purposes of chapter 41 of title 28 concerning the Administrative Office of the United States Courts, by deleting references to the Court of Claims and the Court of Customs and Patent Appeals. The section inserts a reference to the United States Claims Court, thereby providing, among other things, that the budget of the Claims Court, its financial transactions, and its needs for personal property will be handled by the Administrative Office.

Section 316(b) amends 28 U.S.C. 713 to the appointive authority for librarians and their assistants for each court of appeals, including methods of removal.

Section 316(c) amends chapter 47 of title 28 by clarifying the language used to employ criers, messengers, and bailiffs.

It also provides for the first time for the appointment of staff attorneys and technical assistants in a new section 715. In recent years, many of the regional courts of appeals have found it necessary to utilize central staff attorneys, but they have done so without specific statutory authorization. Similarly, despite a lack of explicit statutory authorizations, the judges of the present Court of Customs and Patent Appeals have found it necessary to hire technical advisers to assist them in resolving cases. These advisers are lawyers who have technical degrees and experience in a scientific or engineering field or in patent law in addition to their legal training. The service of these advisers is identical to that of a law clerk, except that they confer with the judges on technical as well as legal matters. Judges of the United States Court of Appeals for the Federal Circuit need a similar system of technical advisers when they review patent cases, and judges of other United States courts of appeals could frequently benefit from the use of technical advisers. It is anticipated that the judges of the Court of Appeals for the Federal Circuit will receive technical assistance at least as great as the type and quality currently being given to the Court of Customs and Patent Appeals.

For several years, annual appropriation acts have invested the chief judge of each court of appeals with the authority to appoint a senior law clerk. *See, e.g.*, Judiciary Appropriation Act, 1979, Pub. L. No. 95–431, title IV, 92 Stat. 1037. However, Congress has not invested the Courts of Appeals with authority to appoint additional staff attorneys. Unlike the executive branch, there is no general statute granting courts appointive authority. *Cf.* 5 U.S.C. 3101. The Committee notes that the courts continue to make appointments in the absence of a Congressional grant of authority. See 5 U.S.C. 5502(a). While the Committee proposes to invest the officers of the court with the authority to appoint staff attorneys and technical assistants subject to certain restrictions, it is not its intent to ratify the actions of the courts in purporting to appoint employees in the absence of the requisite statutory authority not found in an appropriation act.

Section 317

Section 317 provides a retirement system for judges of the United States Claims Court. It is modeled after the bankruptcy judges' retirement provisions and would provide an annuity for a Claims Court judge with respect to his service as a judge of the United States Claims Court, and his military service not exceeding five years, by multiplying 2½ percent of his average pay by years of that service. This represents a substantial increase over existing civil service retirement provided to Commissioners of the Court of Claims, but falls below the retirement provisions accorded article III, life tenure judges.

COURT OFFICERS AND EMPLOYEES OF THE UNITED STATES CLAIMS COURT

Section 321

Under existing law, chapter 51 of title 28, United States Code, concerns Court of Claims staff and reporting procedures. Section 321 of the Bill amends chapter 51 to establish staff and reporting procedures for the United States Claims Court. Chapter 51 of title 28 provides as follows:

Section 791 of title 28 would authorize the Claims Court to appoint a clerk, deputy clerk, and such other employees as may be necessary for the effective conduct of the business of the court. Each of these employees would be subject to removal by the court.

Section 792 of existing 28 U.S.C. relates to the appointment of commissioners by the Court of Claims. As a corollary to the abolishment of the Court of Claims, section 792 is repealed.

Section 794 of title 28 would authorize the judges of the Claims Court to appoint necessary law clerks, subject to any aggregate salary ceilings imposed by law and the regulations of the Judicial Conference of the United States. This provision is similar to section 752 of title 28 which concerns law clerks and secretaries for district court judges.

Section 795 of title 28 concerns the appointment and duties of bailiffs and messengers for the Claims Court and is similar to existing law concerning the Court of Claims.

Section 796 of title 28 concerns the reporting of Claims Court proceedings and is identical to existing law concerning the reporting of Court of Claims proceedings.

Section 797 of existing 28 U.S.C. relates to the recall of retired commissioners of the Court of Claims. Because the Court of Claims is abolished, section 797 is repealed.

Section 322

Section 322(a) of the Bill repeals chapter 53 of title 28 which, under existing law, concerns appointment and duties of employees of the Court of Customs and Patent Appeals.

Section 957 of title 28, United States Code, provides that certain employees of the district court are not eligible for certain offices in the court's administrative structure. Section 322(b) amends this section by deleting subsection (b), which concerns the clerk or assistant clerks of the Court of Customs and Patent Appeals, and by striking subsection designation "(a)".

Section 323

Section 323 repeals sections 1255 and 1256 of title 28, United States Code, which under existing law provide for Supreme Court review of cases in the Court of Claims and the Court of Customs and Patent Appeals. Review of cases in the new appellate court is covered by 28 U.S.C. 1254, which establishes procedures for Supreme Court review of cases in the circuit courts of appeals.

Section 323 also amends the analysis at the beginning of chapter 81 of title 28, United States Code, to conform with the repeal of sections 1255 and 1256, and conforms 28 U.S.C. section 1336 relating to Interstate Commerce Commission orders.

Section 324

Section 1291 of title 28, United States Code, is amended to make explicit that the jurisdiction of the Court of Appeals for the Federal Circuit and of the United States Court of Tax Appeals is limited to the jurisdiction set forth in sections 1295 and 1296, respectively.

Section 1294 of title 28, United States Code, sets forth the regional courts of appeals to which appeals from reviewable decisions of the district and territorial courts are to be taken. Section 324(b) of the Act amends this section by providing an exception from these provisions for the cases covered by new sections 1295 and 1296; those appeals will be assigned exclusively to the Court of Appeals for the Federal Circuit and the United States Court of Tax Appeals, respectively.

Section 325

Section 1292 of title 28, United States Code, currently gives the regional courts of appeals jurisdiction of interlocutory orders of the district courts concerning injunctions and of judgments in civil actions for patent infringement which are final except for an accounting. Section 325 of the Bill amends this section to give the Court of Appeals of the Federal Circuit jurisdiction of interlocutory appeals in cases that will otherwise come to it on appeal.

Section 326

Section 326(a) of the Act adds a new section 1295 to chapter 83 of title 28, United States Code. Section 1295 establishes the jurisdiction of the United States Court of Appeals for the Federal Circuit as follows:

Subsection (1) of new section 1295 of title 28 gives the Court of Appeals for the Federal Circuit jurisdiction of any appeal in which district court jurisdiction was based, in whole or in part, on section 1338 of title 28 (which confers on the district court original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks), except that appeals of district court decisions in cases involving copyrights or trademarks and none of the other issues will continue to go to the regional appellate courts, pursuant to section 1294 of title 28.

Subsection (2) of section 1295 of title 28 gives the Court of Appeals for the Federal Circuit jurisdiction of any appeal from a district court where the jurisdiction of the district court was based, in whole or in part, on section 1346 of title 28, United States Code, except that an appeal in a case brought in a district court under sections 1346(a) and (f) (tax appeals) will go to the new Court of Tax Appeals, and an appeal in a case brought under section 1346(c) (Tort Claims Act) will continue to go to the regional courts of appeals. The Bill modifies section 1346 to bring all other civil cases in which the United States is a defendant under centralized appellate review. Because cases brought under the Federal Tort Claims Act frequently involve the application of State law, those appeals will continue to be brought to the regional courts of appeals.

Subsection (3) of section 1295 of title 28 gives the United States Court of Appeals for the Federal Circuit jurisdiction of any appeal from the United States Claims Court. As provided in the Bill, the jurisdiction of the claims court would be identical to the trial jurisdiction of the existing court of claims, except that it would no longer have authority to handle tax refund cases or cases brought under the Federal Tort Claims Act. Only one case under the Federal Tort Claims Act has ever been filed in the Court of Claims, and that case was dismissed pursuant to 28 U.S.C. 1504 because the appellees failed to consent to the filing of the suit in the Court of Claims.

Subsection (4) of section 1295 of title 28 gives the United States Court of Appeals for the Federal Circuit jurisdiction of appeals from decisions of the Board of Appeals and the Board of Patent Interferences of the Patent and Trademark Office as to patent applications and interferences; from decisions of the Commissioner of Patents and Trademarks as to trademark applications and proceedings; and of appeals in patent and trademark cases brought in a Federal district court under 35 U.S.C. 145 or 146. Under existing law, jurisdiction of appeals from these decisions is in the Court of Customs and Patent Appeals. See 28 U.S.C. 1542. The purpose of placing jurisdiction of these appeals in the United States Court of Appeals for the Federal Circuit is to centralize patent appeals in a single forum and, as a result, to promote uniformity in the application of the law. The provisions of existing law entitling litigants in trademark and patent matters to de novo review in the district court remain unchanged.

Subsection (5) of section 1295 would transfer jurisdiction of appeals from decisions of the United States Customs Court to the new court. Currently, jurisdiction of such appeals is in the Court of Customs and Patent Appeals, pursuant to section 1541 of title 28, United States Code.

Subsection (6) of section 1295 of title 28, gives the United States Court of Appeals for the Federal Circuit jurisdiction to review, by appeal on questions of law only, findings of the United States International Trade Commission as to unfair trade practices in import trade. Jurisdiction of these appeals is in the Court of Customs and Patent Appeals under existing law. See 28 U.S.C. 1543.

Subsection (7) of section 1295 of title 28 gives the United States Court of Appeals for the Federal Circuit jurisdiction to review, by appeal on questions of law only, certain findings of the Secretary of Commerce. Currently, jurisdiction of these appeals is in the Court of Customs and Patent Appeals, pursuant to section 1544 of title 28, United States Code.

Subsection (8) of section 1295 of title 28 gives the Court of Appeals for the Federal Circuit jurisdiction of appeals under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461). Under existing law, the Court of Customs and Patent Appeals has jurisdiction of these appeals, pursuant to section 1545 of title 28, United States Code.

Subsection (9) of section 1295 of title 28 gives the Court of Appeals for the Federal Circuit jurisdiction of any appeal from a final order or final decision of the Merit Systems Protection Board. Currently, jurisdiction of these appeals is in the Court of Claims or a United States court of appeals, pursuant to sections 7703(b)(1) and 7703(d) of title 5, United States Code.

UNITED STATES AS DEFENDANT

Section 331

Under existing law, section 1346 of title 28, United States Code, gives the district courts original jurisdiction, concurrent with the court of claims, of civil tax refund cases and of other civil actions or claims against the United States, under $10,000 in amount, and founded on the Constitution, an Act of Congress, a regulation of an executive department, an express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. Section 331 of the bill eliminates the jurisdiction over civil tax refund cases, but otherwise continues this concurrent jurisdiction over other matters, while changing the reference to the Court of Claims to a reference to the United States Claims Court.

Section 332

Section 1398(b) of current title 28 provides that a civil action to enforce, enjoin, or suspend any order of the Interstate Commerce Commission made pursuant to a referral of a question or issue by a district court to the Court of Claims must be brought in the court which referred the question or issue. Section 332(a) of the Bill amends this subsection by deleting the reference to the Court of Claims and substituting a reference to the Claims Court.

Section 1406(b) of title 28, United States Code, provides that if a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, the district court shall transfer the case to the Court of Claims. Section 332(b) of the Bill amends this provision by removing references in the section to the Court of Claims and substituting references to the claims court, thereby permitting similar transfers from the district courts to the newly constituted trial court.

UNITED STATES CLAIMS COURT; JURISDICTION AND VENUE

Section 341

Section 341 of the Act amends chapter 91 of title 28, United States Code. Under existing law, this chapter sets forth the jurisdiction of the Court of Claims. With the exception of civil tax refund cases noted above and Federal Tort Claims Act cases noted below, claims court jurisdiction is identical to Court of Claims jurisdiction.

One provision of existing law has not been included in amended chapter 91. Under current section 1504 of title 28, United States Code, the Court of Claims has jurisdiction to review Federal Tort Claims

Act cases with the consent of both parties. According to the Administrative Office of the United States Courts, the only such appeal ever filed was summarily dismissed because the appellee had not consented to have the appeal heard in the Court of Claims. Section 1504 was therefore omitted.

In addition, section 341 gives the new Claims Court the power to grant declaratory judgments and give equitable relief in controversies within its jurisdiction. This provision will for the first time give the court specializing in certain claims against the Federal Government the ability to grant litigants complete relief. The committee concluded that this provision will avoid the costly duplication in litigation presently required when a citizen seeks both damages and equitable relief against the Government.

Section 342

Under existing law, chapter 93 of title 28, United States Code, establishes the jurisdiction of the Court of Customs and Patent Appeals. Because these functions are being transferred to the United States Court of Appeals for the Federal Circuit, section 342 of the Act repeals chapter 93 of title 28 and amends the analysis at the beginning of Part IV of title 28 so that it is conformed accordingly.

Section 343

Section 343 of the Bill repeals section 1926 of title 28, United States Code, which deals with fees and costs in the Court of Customs and Patent Appeals, and amends the analysis at the beginning of chapter 123 of title 28 so that it is conformed accordingly.

Section 344

Section 344 of the Bill repeals section 2110 of title 28, United States Code, which deals with the time for appeal to the Court of Claims in tort claims cases, because of the omission from amended chapter 91 of current section 1504 of title 28. The analysis at the beginning of chapter 133 of title 28 is amended to reflect this repeal.

Section 345

Section 345 repeals 28 U.S.C. 2353 since jurisdiction over such appeals is vested exclusively in the Court of Appeals for the Federal Circuit.

UNITED STATES CLAIMS COURT PROCEDURE

Section 351

Under existing law, chapter 165 of title 28 establishes procedures for the Court of Claims. Section 351 amends this chapter to make the provisions applicable to the United States Claims Court. With the exception of technical changes made to convert the name of the court from the Court of Claims to the Claims Court and to eliminate references to the trial commissioners of the Court of Claims, these provisions are identical to existing law.

Section 352

Section 352 of the bill repeals chapter 167 of title 28, United States Code, which under existing law establishes procedures for the Court of Customs and Patent Appeals. The repeal of this chapter will require certain changes in the procedure of taking an appeal from decisions of the Customs Court. Under current practice, pursuant to section 2601 of chapter 167 of title 28, an appeal is made by filing a notice of appeal in the Court of Customs and Patent Appeals. On the other hand, appeals from a decision of the district courts is made by filing a notice of appeal in the district court. Upon the repeal of chapter 167 of title 28, appeal from a decision of the Customs Court will be made by filing a notice of appeal in the Customs Court. The clerk of the Customs Court will then be required to transmit to the United States Court of Appeals for the Federal Circuit the record of the case and evidence taken, together with either the findings of fact and the conclusions of law or the opinion.

Section 353

Under existing law, section 2638(b) of title 28, United States Code, states that decisions of the Customs Court are to be appealed to the Court of Customs and Patent Appeals within the time and in the manner prescribed by section 2601 of title 28, which deals with procedures in the Court of Customs and Patent Appeals. Section 353 of the Bill amends section 2638(b) of title 28 to provide that appeal of a decision of the Customs Court is to be made to the United States Court of Appeals for the Federal Circuit within sixty days after entry of the judgment or order. Further procedures governing appeals from decisions of the Customs Court will be determined by the Court of Appeals for the Federal Circuit by rule of court.

Section 354

Section 354 conforms the Federal Rules of Evidence to refer to the Claims Court.

Title IV—Tax Appellate Structure

Section 401

Section 401(a) creates the United States Court of Tax Appeals and declares that such court should be national, encompassing all eleven Federal judicial circuits.

Section 401(b) provides the procedure by which the members of the new tax court will be chosen. The bill provides that the new court shall consist of eleven Federal circuit judges, with one judge being designated from each circuit. The Chief Justice of the United States designates one of the circuit judges from each circuit court. In any case where the Chief Justice is unsuccessful in designating a circuit judge, this section provides the option of designating a district court judge from the circuit. The bill also provides—in express terms—that a circuit judge who serves on the new tax court continues to remain a judge of the circuit court from which he was designated. The committee intends that each judge designated to serve on the Court of Tax Appeals will maintain his chambers and his official duty station in his home circuit or district. The committee also anticipates that each designated judge will continue to carry such caseload from his court of appeals or district court as he is capable of doing, consistent with his caseload from the Court of Tax Appeals.

Section 401(c) provides that the new tax court shall hold at least one term or session per year in each of the circuits. The bill also provides that the court should hear appeals in the judicial circuit where the tax payer is domiciled, or, in the case of corporations, in the circuit where the corporation has its principal place of business, or, in the case of a cooperative or organization claiming a tax exemption, in the circuit which constitutes its principal place of activity.

Section 402

Section 402(a) provides that the first chief judge of the new Tax Court shall be appointed by the Chief Justice of the United States from the eleven members of the new court. Thereafter, seniority of commission will determine subsequent chief judges of the new tax court.

Section 402(b) provides that tax court panels shall consist of at least three judges but that the court may decide on panels of more than three. In addition, six of the eleven judges of the court can call for an en banc rehearing if they determine "that it is in the interest of justice." At least nine judges are required to hear a case en banc. In considering whether or not to hear a case en banc, the bill provides that the judges should consider—but need not limit their consideration to—

1. whether the question presented in the case was thought to be novel and unlikely to recur or was likely to apply to many taxpayers;
2. whether there was unanimity in the panel which decided the case;
3. whether any of the judges who composed the panel which heard the case suggested that it be reheard; and
4. whether the case presented issues of first impression.

Section 402(c) provides that the Chief Justice of the United States may—in a particular case—designate and temporarily assign a Federal district judge to serve on the United States Court of Tax Appeals. This section also provides that the Director of the Administrative Office of the United States Courts shall file a report with the President and the two Judiciary Committees of the Senate and the House of Representatives "concerning the implementation and effectiveness of the United States Court of Tax Appeals." Such report shall be filed on or about January 1, 1985, and is designed to provide the President and the Congress with an update as to the effectiveness and success of the new tax court structure.

Section 403

Section 403 provides that appeals from the Court of Tax Appeals may be reviewed by the Supreme Court of the United States by writ of certiorari.

Section 404

Section 404 provides that the jurisdiction of the United States Court of Tax Appeals is exclusive over any civil tax appeal from a district court or the United States Tax Court.

Section 405

Section 405 precludes the United States Court of Tax Appeals from exercising any appellate jurisdiction over orders of Federal agencies.

Section 406 amends chapter 47 of title 28 of the United States Code by adding a new section 716 enumerating the officers and employees of the Court of Tax Appeals.

Section 407 amends section 462 of title 28, U.S.C., by adding a new subsection instructing the Director of the Administrative Office of the United States Courts to provide permanent accommodations for the United States Court of Tax Appeals in the District of Columbia. Inasmuch as the judges of the Court of Tax Appeals will be maintaining their chambers and official duty stations in their home circuits and districts, the need for new accommodations will be mineral. However, section 407 provides that any permanent accommodations will be in the District of Columbia, which is the location of the court's clerk.

Title V—Technical and Conforming Amendments Outside of Title 28 Relating to the United States Court of Appeals for the Federal Circuit and the United States Court of Tax Appeals

Section 501

Section 501 amends section 356(c) of title 2, United States Code, which concerns salaries for judges under the Federal Salary Act of 1967, by including the judges of the United States Claims Court within the provisions of that subsection.

Sections 502 through 508 and 510 through 514—Technical amendments

Sections 502 through 508 and 510 through 514 of the Act amend sections of the United States Code outside title 28 by changing references to the Court of Claims, the Court of Customs and Patent Appeals, or the courts of appeals of the United States to references to the United States Claims Court, the United States Court of Appeals for the Federal Circuit, or the United States Court of Tax Appeals, whichever is appropriate in a specific context. The sections also delete references to the Court of Claims, the Court of Customs and Patent Appeals, or the trial commissioners or chief judge of the Court of Claims, wherever that is appropriate. Among other things, these amendments make clear that cases coming previously to the former Indian Claims Commission will be heard by the Claims Court, in accord with recent congressional action.

Section 7456(c) of the Internal Revenue Code of 1954 (26 U.S.C. section 7456(c)) under existing law provides that commissioners of the tax court receive the same compensation and travel and subsistence allowances as that provided by law for commissioners of the court of claims. Because the Bill abolishes the position of commissioner of the Court of Claims, section 508(c) amends this section to provide that each Tax Court commissioner receives pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. sections 351–361), as adjusted, and be reimbursed for all necessary traveling expenses in accordance with chapter 57 of title 5, United States Code.

Section 509—Amendment conforming section 713 of title 44

Section 713 of title 44, United States Code, concerns the printing and distribution of Journals of the Senate and House of Representatives. Under present law, 822 copies of the Journals are printed, and two copies of the Journals are distributed to the Court of Claims. Section 514 of the Bill reduces the number of Journals printed to 820 and deletes the reference to the court of claims.

Title VI—Miscellaneous Provisions

Section 601—Effective date

This section provides that the Bill—other than the provisions of title I, parts A and D—shall take effect two years after enactment. The delay is intended to provide time for planning the transition and for permitting the bar to become familiar with the provisions.

Section 602—Effect on pending cases

This section provides for the orderly disposition of cases pending on the effective date of the Bill.

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at what expense per month; is the Federal Government paying the expenses and salary of said Akin?

3. Did Representative Cayce Williams, of Weakley County, vote for the disfranchisement bill after expressing himself as being opposed to it; a short time after the adjournment of the extraordinary session was he appointed to a place in the Social Security set-up in Tennessee; at what salary; is he now drawing pay from the Federal Government?

4. Was Elijah Tollett, a representative from Cumberland County, promised a position in the unemployment division of the Social Security set-up in Tennessee; did he vote for the disfranchisement measure; was it reported in the public press that he had been appointed to a Social Security position; did it then occur that Representative Tollett was under indictment in the Federal court; after that did his sister receive an increase in salary of $50 per month?

5. Did James Vines, a Republican representative from Washington County, vote for the disfranchisement bill recommended by the Governor; after he voted for it was a brother of his put to work in the Social Security set-up; at what salary; is he drawing a salary from the Federal Treasury?

6. Did a young son, some 18 or 19 years of age, of Mrs. Caroline O'Dell, of Newport, Republican representative from Cocke County, receive a place in said Social Security set-up; on what date did he receive it; on what date did Mrs. O'Dell vote for the Browning disfranchisement bill; is her son on the pay roll of the Federal Government in this set-up?

7. Please have the question of the three young ladies who were discharged and others put in their places examined into, and kindly report who recommended dismissal of those already in and who recommended the employment of those who took their places, giving their names.

(You will note that Mr. Hale states that the above-mentioned five members of the legislature were bribed to vote and are being paid for their votes out of the Federal funds allotted to social-security work.)

8. Please ascertain and report specifically whether any examination was held prior to the appointment of these three members of the legislature, and the brother and son of the other two members of the legislature referred to in this communication.

9. Please advise me if your Board does not believe that the following provision of the Social Security law should be repealed:

"(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; * * *."

My own judgment is that where Federal money is expended it should be expended by Federal officials, not by the State officials or any other organization.

These alleged acts have so recently occurred that I know you will not have the slightest difficulty in getting the information and in answering categorically the facts.

Of course, I could have a Senate investigation of the matter, but such is my great respect, admiration, and esteem for you, and in confidence in your honesty, that I am writing you first so that you can have the matter examined into and advise me as early in January as you can.

I feel that I should also tell you that I have made an independent examination of these facts, and that information leads me to believe that these facts are true.

Thanking you for your early consideration of this matter, I am,

Sincerely your friend,

KENNETH MCKELLAR.

AMENDMENT OF TARIFF ACT OF 1930—AMENDMENT

Mr. GUFFEY submitted an amendment intended to be proposed by him to the bill (H. R. 8099) to amend certain administrative provisions of the Tariff Act of 1930, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

JACKSON DAY DINNER SPEECH BY SENATOR PEPPER

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD a Jackson Day dinner address delivered by Senator PEPPER at Miami, Fla., on January 8, 1938, which appears in the Appendix.]

RESTRICTED IMMIGRATION AND MANDATORY DEPORTATION—ADDRESS BY SENATOR REYNOLDS

[Mr. REYNOLDS asked and obtained leave to have printed in the RECORD a letter signed by residents of 12 different States and the District of Columbia, relative to a radio address delivered by him on January 10, and the text of a radio address delivered by him on January 12, 1938, on the subject "Restricted Immigration and Mandatory Deportation," which appear in the Appendix.]

MINUTES OF THIRTY-FOURTH ANNUAL MEETING OF THE UNITED STATES GROUP—THE INTERPARLIAMENTARY UNION

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD the minutes of the Interparliamentary Union, the thirty-fourth annual meeting of the United States group, held in Washington, D. C., on Monday, January 18, 1937, which appears in the Appendix.]

EQUAL RIGHTS FOR WOMEN—SPEECH OF VERA BRITTAIN

[Mr. BURKE asked and obtained leave to have printed in the RECORD a speech delivered by Vera Brittain, British author and lecturer, on the subject "Equal Rights for Women," before the national conference of the National Women's Party, meeting in Washington, D. C., December 14, 1937, which appears in the Appendix.]

AIRPORT SITE FOR THE DISTRICT OF COLUMBIA

[Mr. GIBSON asked and obtained leave to have printed in the RECORD an article from the Washington Evening Star of January 11, 1938, relative to an airport site for the District of Columbia, which appears in the Appendix.]

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

The VICE PRESIDENT. When the Senate took a recess yesterday the RECORD indicates that the Senator from North Carolina [Mr. BAILEY] had the floor and desired to continue his address this morning. The Senator from North Carolina, therefore, is recognized.

Mr. REYNOLDS. Mr. President, will my colleague yield to me?

The VICE PRESIDENT. Does the senior Senator from North Carolina yield to his colleague?

Mr. BAILEY. I yield.

Mr. REYNOLDS. Mr. President, yesterday I made mention of a number of eminent colored people in North Carolina, and I stated the fact that Dr. Miller, colored, a physician of the city of Asheville, was looked up to and respected and had provided inspiration for other colored physicians of the South. I likewise mentioned Dr. Shepherd, who is president of the North Carolina College for Negroes. I referred to this matter because of an article which I observed in the columns of the press of North Carolina, making mention of the fact that North Carolina had named three roadways or highways for eminent colored educators, and I introduced in the RECORD that article.

I recall the other day that my colleague from Tennessee [Mr. MCKELLAR] read into the RECORD a list in numbers of colored dentists, doctors, educators, writers, physicians, and so forth. I was wondering if the Senator from Tennessee had that list divided into States.

Mr. MCKELLAR. No; I have not.

Mr. REYNOLDS. My reason for making the inquiry was that I wanted, if possible, to contribute to the remarks of my colleague from North Carolina [Mr. BAILEY], who is addressing the Senate on this subject. I shall be glad to have later a list of the number of colored dentists, doctors, educators, school teachers, and so forth, in Tennessee, if my colleague from Tennessee has not that list at the present time.

Mr. MCKELLAR. I will look up the data I have; and if I have the information by States, I shall be delighted to furnish it.

Mr. REYNOLDS. If the Senator has that information, I shall appreciate very much his providing me with it, in order that I may turn it over to my colleague [Mr. BAILEY] while he is addressing the body at this time.

Mr. JOHNSON of California. Mr. President, I desire to ask the Senator from North Carolina a question. I heard him speak of a list of colored gentlemen. Does he mean the list of those who were brought here at the expense of the Government by the Agricultural Department? Was it a list of those who ran colored newspapers in the United States?

Mr. REYNOLDS. Oh, no! I was only making mention of a list of colored doctors, dentists, lawyers, educators, and writers. I made mention of that for the reason that several days ago the Senator from Tennessee [Mr. MCKELLAR] introduced into the RECORD, in conjunction with his remarks, a statement of the number of colored lawyers, doctors, and educators to be found in the United States.

Mr. JOHNSON of California. I did not fully catch what the Senator said, and I thought probably he referred to the list of distinguished colored editors who were brought here at the expense of the United States by the Agricultural Department.

Mr. REYNOLDS. No, Mr. President.

Mr. McKELLAR. Mr. President, if I may interrupt for just a moment, if the Senator from California has that list I wish he would furnish it to the Senate. As a member of the Appropriations Committee I should like to have that list, if possible.

Mr. JOHNSON of California. I am sure the Senator would; but the Senator from Ohio [Mr. BULKLEY], I think, put in the RECORD a letter furnished by Mr. Tolley, of the Agricultural Department, justifying it. The Senator will find the list in the RECORD.

Mr. McKELLAR. I shall be glad to look it up.

Mr. BAILEY. Mr. President, yesterday afternoon I had reached the stage in my argument in which I was about to bring forward the farewell address of President Andrew Jackson in support of my contention that not only is this bill unconstitutional, but its unconstitutionality is such as to reach into the vitals of the structure of our Government. I hope I may proceed with that address today. I have been informed, however, that the distinguished senior Senator from Arkansas [Mrs. CARAWAY], for whom we all have a very high and warm regard and whom we delight to hear, desires to be heard at this time. I should like, therefore, to have leave to yield the floor to her without yielding my right to proceed at the conclusion of her remarks. I ask unanimous consent to that effect.

Mr. CONNALLY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Texas will state it.

Mr. CONNALLY. Is unanimous consent required to enable the Senator to yield, inasmuch as his remarks today are a mere continuation of the speech he began yesterday?

The VICE PRESIDENT. Unanimous consent is not required. In all good faith, however, if the Senator from North Carolina should yield the floor to the Senator from Arkansas, the Chair would hold that the Senator's remarks up to this time constituted one speech, if that is what the Senator from Texas is inquiring about.

Mr. CONNALLY. The inquiry was, if the Senator from North Carolina yields to the Senator from Arkansas, may he not resume his speech at the end of her remarks?

The VICE PRESIDENT. If the present occupant of the chair is in the chair at the time, the Senator from North Carolina will be recognized; and the Chair hopes the same course will be followed by any Senator who may be in the chair at the time.

Mrs. CARAWAY. Mr. President, for a long time I have refrained, for a number of reasons, from having anything to say on this so-called antilynching bill. The fact that it is so called has made it embarrassing for those who must oppose it on the grounds of unconstitutionality and its effect upon the rights of the States to self-government.

I have never approved or condoned lynchings. I have always been sick at heart when I have read of anyone being executed without a trial in the courts. Most of my life I have been an employer of colored men and women as helpers in running my household. I have been considerate of their health and their feelings. I have sought to establish a mutual understanding of what each race owes to the other. In other words, this relationship has been placed upon a basis of mutual respect, which fosters self-respect and regard for the rights of others. I have been most successful and happy in retaining their services. In fact, my present maid, whom I brought with me from Arkansas, has been in my employ as laundress since 1905, and has been with me in Washington for 10 years or more as general housekeeper. Another woman, with two children, reared her children while in my employ, living in a house on our grounds. She unfortunately developed a cancerous condition in her wrist, and the arm had to be amputated. I took her to Memphis and had the operation performed. We went to a Memphis doctor because she wished to go there, even though it was more expensive for us. We kept her in our home, paying her wages, and making her feel she was still self-supporting, hoping to prolong her life. She went to her daughter in Ohio for a visit and died there, and I lost a friend.

I am not trying to give myself a halo or anything like that. I am only trying to show that the Negro question does not enter into my opposition to this bill. I am sure my attitude is the attitude of most of the people of the South. I am a bit resentful and fearful that bad feelings engendered by such legislation as this may retard the good work being done to help and uplift a people who have always had my sympathy.

Official matters coming to my office from Negroes are handled the same way as are others. Everything I can do to see that they get justice is done. I have assisted in hundreds of worthy cases of this kind.

We hear much criticism of the so-called filibuster on this measure. I do not think this is a filibuster. This is a debate which has placed the issue before the people in such a way that the whole country now knows there is more involved than the mere prevention of lynchings. The very title of the bill is misleading, as I have found to be the case with many measures brought before the Congress. It is called an antilynching bill. Is not the first reaction to that by everyone who reads it "Why, of course, I am for that. How could one oppose it?" For lynchings are naturally obnoxious to everyone.

The great majority of the people do not stop to think of what may be contained in the bill itself. I doubt if even a small percentage of the citizens of the United States, despite the propaganda which has been carried on for years in behalf of the bill, have ever read it or realize the purpose back of the fight to have it enacted.

As have other Senators, I have been bombarded with propaganda urging me to support the bill. I received one communication from an organization in a large city which was particularly strong in its demand for the enactment of this bill. I sent the authors of the communication a copy of the bill and asked them to write me fully the sections which they favored or disliked. I never had a reply.

I may be in error, Mr. President, but I firmly believe that if the people of the United States knew what was really in this measure and all of the purposes behind it the percentage of those who favor it would be relatively small.

I have no desire to discuss the obvious unconstitutionality of the bill or its other legal features. This has been so ably done by the senior Senator from Idaho [Mr. BORAH] and other great lawyers in this body that I should only be painted the lily. I seriously doubt that many lawyers in the Senate or out of it who know constitutional law will argue that the measure is constitutional.

For a while I may have had some doubt that this bill was aimed at the South. I have none now. It is a gratuitous insult to our section. It is just another blow in furtherance of a desire to reduce to a minimum, if possible, the influence of a group and section that have always believed in a democratic form of government. These people—my people—have always clung with undying fealty to the tenets of the States' rights doctrine in the face of continued assaults of the Republican Party; and now Democrats themselves, or self-styled Democrats, are making the attack.

We of the South have stood much, Mr. President. We have surrendered much. This effort is just one of the many which would seek to take away from our section some of the influence we have had.

When the Democratic national convention met in Philadelphia in 1936 there had been a preconvention campaign for the abolishment of the two-thirds rule. What the South was thinking of when it let that rule be abolished is more than I can understand. My voice was raised in protest against the abrogation of the two-thirds rule when we had a meeting of our State delegation on the subject. The abrogation of this rule will cost the South much in the days to come.

Since then various things have happened which lead me to believe that there are certain groups who would destroy the South not only as a political entity but as a business threat in competition with other sections.

As an illustration of a part of this plan let us consider the feverish desire to pass the pending bill. Why force consideration of it at the present time?

Ever since the Civil War we have had periodically a bill of this sort introduced. This has been done despite the fact that the records show an ever-increasing decline in lynchings.

The figures from the Tuskegee Institute which were placed in the RECORD by my colleague [Mr. MILLER] and others show that there was never less need of a bill of this sort than at this time. An editorial from the Arkansas Democrat, which I placed in the RECORD a few days ago, also bears on this point.

When there happens to be a lynching, it is given great publicity. We seldom, if ever, hear of the great number of cases where the orderly processes of the law are carried out, even in the face of extremely revolting crimes. It is seldom that we hear of the prevention of lynchings by brave public officials who risk their lives in protecting their prisoners from mobs, although it has been read into the RECORD several times that in 1937 there were only 8 lynchings, while 56 were prevented.

Let me repeat, there never was a time when there was less need of forcing through a bill of the character of the one now before the Senate.

There was no lynching in my State during the past year. The orderly processes of the courts were carried through time and again. Let me bring to the attention of the Senate an occurrence which has happened since the debate on this measure has begun.

I desire to have printed in the RECORD at this point as part of my remarks a letter from a prosecuting attorney of my State describing a most revolting crime in Crittenden County, Ark., and the way in which the case was handled. Notwithstanding the terrible offense committed, there was no talk of lynching.

The PRESIDING OFFICER (Mr. MILLER in the chair). Is there objection to the request of the Senator from Arkansas?

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OSCEOLA, ARK., *January 10, 1938.*

Re: Antilynching bill.
Senator HATTIE CARAWAY,
Senate Building, Washington, D. C.

DEAR MRS. CARAWAY: I notice that the antilynching measure is before the Senate for consideration. Naturally we people of this section of the country are opposed to a law of this kind. I certainly feel that all serious cases, where lynching usually follows, can be handled in a lawful and orderly manner.

No doubt you have read from the papers an account of the trial of two Negroes at Marion, Ark., in this district, and by reading the papers it would be sufficient to convince anyone that Negroes, although charged with assaulting a white girl, can have a fair and impartial trial.

On the night of December 25, 1937, two Negroes, Theo Thomas and Frank Buster Carter, residents of Memphis, Tenn., assaulted Miss Maple Wilson, a white girl 18 years old, also a resident of Memphis. The crime was committed on the night of December 25. On the morning of December 26 these two defendants were arrested. On December 27, as prosecuting attorney of this district, I filed information against these defendants, charging them with the crime of rape. A certified copy of the information was served on the defendants, together with a bench warrant that was issued by the clerk of the court. On the afternoon of December 30 these defendants were arraigned on these charges. They were advised of the charges placed against them. Attorneys were appointed by the court to represent them and make whatever defense they had. One of the defendants indicated that his people would be able to raise money to pay these attorneys, and I am advised that they have been paid some money as a fee to represent the defendants. Mr. W. B. Scott, of Marion, a veteran of the bar, together with Mr. Cecil Nance, a very capable young lawyer, also of the Marion bar, were appointed to represent these defendants. The case was set for trial on January 6, 1938, a special term of court being called. The defendants were advised a week before the trial of the time and place of trial. They were given every opportunity possible to get witnesses and to arrange their defense. On January 6 court convened and all parties announced ready for trial. Great care was taken in selecting a jury. About 10 challenges were exercised by the defendants. In order to be very precautious that they would get a fair trial and that they could not complain that they were tried by white jurors who were prejudiced against Negroes, two Negroes were placed on the regular panel, and about three other Negroes were called as special jurors. The two Negroes on the regular panel were accepted by the State. One of them was excused by the defendants. The jury was completed, consisting of 11 white men and 1 Negro. The case went to trial, and at the conclusion of all the testimony, and instructions given by the court, and argument of counsel, the jury retired to consider its verdict, and after about 7 minutes they returned in open court and rendered a verdict, finding the defendants guilty and fixing their punishment at death by electrocution. A few hours later they were sentenced to be electrocuted on the 8th day of February. The defendants filed a motion for new trial, which was overruled by the court. They indicated that they might appeal from the verdict. They were told then that they would be given every opportunity they wanted in order to perfect their appeal.

Briefly, the testimony showed that these defendants approached a young man by the name of F. E. Brading and the young lady, Miss Wilson, who had parked in a car just off Highway 61 near the Government fleet in Crittenden County, Ark.; they first indicated that they intended to rob the two; they both got in the car with Miss Wilson and Mr. Brading, drew knives and threatened to kill them; they forced the two to get in the back seat with one of the Negroes; the other Negro got in the front seat and started to drive off with the car, then stopped and forced Miss Wilson to get in the front seat with the other Negro. Then they began to threaten Miss Wilson and let her know that they intended to assault her. They drove for about a quarter of a mile, stopped the car, and one of the Negroes drew a knife on young Brading, and he ran to the Government station, which was about 100 yards from where the car was parked to get help. While he was gone both the Negroes drug Miss Wilson out of the car, across a field into the woods, and one of the Negroes assaulted her and brutally mistreated her. After he had finished he turned her over to the other Negro and told him that after he had finished with her to kill her and throw her in the river. The other Negro took her and kept her out in the woods and fields for about 4 hours; during which time he assaulted the young lady at least two times. She remembered the two times positively and was hazy about other times that occurred, because she lapsed into unconsciousness at times.

The Negroes were positively identified as being the Negroes who went to the car. They were seen by some other people on the highway near the scene where the car was parked. They were arrested and positively identified as being the Negroes who committed the crime. They were placed in jail and kept under guard, and it was generally understood that no one could be allowed to interfere with the trial of these Negroes. The officers were very cautious in handling the whole affair. The Negroes took the stand in the trial of this case, and both of them admitted that they were the two Negroes who approached Miss Wilson and Mr. Brading; that they drove the car down the road until it stuck in the mud, and that they took Miss Wilson and Mr. Brading out of the car. They admitted practically all of the testimony given by Miss Wilson, as to the time and place that they were with her. The only thing they denied was the assault. Miss Wilson was taken to the St. Joseph's Hospital after she was found, which was about 2:30 in the morning of December 26. The two Negroes were with her about an hour. One of them left and the other stayed with her the rest of the time, about 3½ hours, or maybe 4. In all they had her out in the woods and in the fields about 5 hours.

When she was found practically all of her clothes were torn off of her. She was a pitiful sight. She was bruised, lacerated, and bleeding. Miss Wilson, after being assaulted and after being found by the officers, was taken to the hospital, was examined and treated. The doctors who treated her stated that she had been assaulted. One of the doctors testified in the trial that she had been assaulted; that she was lacerated and bleeding; that she was bruised about her breasts; that she had bruises and contusions about her body and limbs. She was required to stay in the hospital about 10 days. She was in a very nervous condition, and at the time of the trial it was plain that she was suffering physically and mentally. In fact she still presents a very pitiful sight. It seems that her future is very dark. In face of all of this testimony and the circumstances surrounding the case, these Negroes were protected by the officers. They were given a fair trial. They were allowed to have any witnesses that they wanted. They were tried by a jury on which at least one of their own color served. This trial happened in Crittenden County, Ark.

This should be sufficient evidence that the officials and citizens of the South are ready and willing to give people who commit the most heinous crimes a fair and impartial trial.

Judge Neil Killough was the presiding judge. Sheriff Howard Curlin and his deputies arrested these defendants, and he, together with some of the State police, kept them in custody and protected them against any demonstration of mob violence; and I am glad to say that the people were reconciled with the proceedings, and no offer or attempt was made to mob or lynch these Negroes. As prosecuting attorney, I informed them of every step that was being taken against them. In presenting the case they were given every consideration that any defendant on trial is given. No effort was made on my part to prejudice the minds of the jurors against the Negroes on trial. I only argued the law and evidence as introduced in the case and told the jury to give them the benefit of the doubt allowed them under the law.

I am giving you this information, Mrs. CARAWAY, because it may be possible that this will be of some assistance to you in your opposition to the antilynching bill. If I can be of further service to you in this cause or any other cause, I shall be glad to have you call on me. If you think it advisable, or even worth while for me to appear before the committee or any committee in connection with this matter, I shall be glad to do so and would be willing to make the trip to Washington on short notice.

Sincerely,

BRUCE IVY.

Mrs. CARAWAY. Mr. President, I am proud of the actions of the officials of Crittenden County and my State in their handling of this case. I will now read an editorial from the Arkansas Gazette regarding the way in which this case was conducted:

THE TRIUMPH OF THE LAW IN CRITTENDEN COUNTY

Crittenden County and Arkansas have given the country a demonstration of respect for law. Justice moved swiftly in the trial at Marion of two Negroes on a charge of raping a white woman. The proceedings lasted only 1 day. The verdict, carrying the death penalty, came only 7 minutes after the jury began its deliberations. Among the jurors who returned that verdict was a member of the defendants' own race, and six other Negroes had been in the special venire summoned to try the case. If justice was swift, it was also scrupulous in observing every right of the men on trial. In the crowded courtroom there was no demonstration against the prisoners.

In the whole conduct of this case the Crittenden County courts and the people of Crittenden County have done an invaluable service to Arkansas and to the South. The orderly way the law dealt with two Negroes guilty of a terrible crime, the crime most provocative of resort to lynching, is the most impressive answer that could be made to the ill-advised if not futile legislation now in Congress, the so-called antilynching bill.

I agree with the Gazette that that is the most impressive answer that could be made to the ill-advised, if not futile legislation, now being considered.

I am convinced that the people who are sponsoring this bill and fighting for its passage are, at least in part, inspired to do so for political reasons.

I am also forced to the conclusion that a part of this plan is an attempt to change the Constitution without having to refer an amendment to the people. Those sponsoring the bill want the Federal Government to have all of the power of a Nazi or Fascist state before the people are aware of what is happening.

Our Government was founded on the principle of States' rights, and has, because of that, achieved and maintained a leading position among nations which could have come no other way. Shall we take this backward step?

Some Senators, from whom we expected a better understanding of the needs of Government, want to take away the last vestige of States' rights, they would sweep away the jurisdiction of our courts, and camouflage this purpose by saying that it is to prevent a crime which has all but passed into the limbo of things that were.

I feel that should the bill be enacted, it might be unenforceable. Prohibition certainly was not enforced. There are times when law will not prohibit. All will agree that at the present time lynching is not as serious a problem as is kidnaping. I should like to quote a paragraph from a recent editorial in the Washington Post, calling attention to this fact:

At present lynching is not as serious a problem as kidnaping. Twenty persons were kidnaped in the United States last year. If State officials, including Governors, are to be prosecuted for negligence in bringing lynchers to justice, the Government should also crack down when kidnaping and murder cases are bungled. Following the theory of the antilynching bill to its logical conclusion, therefore, law enforcement would soon be a Federal problem and local self-government would be on the road to extinction.

I firmly believe that should the bill become a law and be perpetrated upon the American people, it would in itself be a greater crime against our Government and our people than any that has ever been committed in our whole history.

Mr. President, I ask unanimous consent that the clerk read the views of the minority of the Committee on the Judiciary of the Senate, Forty-ninth Congress, second session, on a bill similar to the one before the Senate.

The PRESIDING OFFICER. Is there objection?

There being no objection, the matter referred to was read, as follows:

[Senate. Views of the minority, No. 1956. 49th Cong., 2d sess.]

In the Senate of the United States. February 25, 1887. Ordered to be printed

Mr. George, from the Committee on the Judiciary, submitted the following views of the minority (to accompany bill S. 2171):

The undersigned, a minority of the Committee on the Judiciary, are unable to agree with the majority either as to the expediency or the constitutionality of Senate bill No. 2171, "to provide for inquests under national authority."

Sanctioned as the bill is by a majority of the members of this committee, it comes before the Senate with the prestige of the high character and eminent abilities of its framers and supporters. In opposing it on constitutional grounds we admit that it is incumbent on us to show by the clearest reasoning and the highest judicial authority that this bill is, as we believe it to be, unwarranted by the Constitution, and, if enacted, would be a grave and serious usurpation by Congress of essential powers reserved to the States, and that the means by which the inquest is to be made are equally in violation of that instrument.

This must be our apology for that elaboration of argument necessary to make due and proper inquiry into and examination of the questions involved in the bill.

The bill provides that on the application of any three citizens of the State in which the injury shall be committed the United States circuit judge shall order a special term of his court to be held, and shall then summon witnesses and inquire into facts connected with any alleged homicide committed, or serious bodily harm, or serious injury in person or estate, perpetrated or threatened, where such offense has been committed: "(1) Because of the race or color of such person so killed, injured, or threatened; (2) or because of any political opinion which such person so killed, injured, or threatened may have held in regard to matters affecting the general welfare of the United States; (3) or with design to prevent such person so killed, injured, or threatened, or others, from expressing fully such opinion; (4) or from voting as he or they may see fit at any election of officers whose election is provided for by the Constitution and laws of the United States; (5) or to affect the votes of such person or others at such elections."

And the bill further requires the judge to report the evidence thus by him taken, and his conclusion of facts thereon, to the President of the United States, to be by him laid before Congress.

No other action by the judge or court is required or even contemplated.

The theory of the bill, however, must necessarily assume that Congress may, when the report is submitted to it, make it the basis of legislative action in respect to all the matters named in it. That is, the bill asserts a power in Congress to legislate for the protection of the rights and for the punishment of the wrongs specified in it. These alleged rights, except in the two last clauses, which refer alone to voting at Federal elections, are the right to security in person and estate against assaults made or threatened by the wrongful acts of private individuals, if such assaults were made because of race or color or of holding or expressing political opinions. Or, in other words, jurisdiction is asserted in the Federal Government over all injuries to person or property, committed or threatened, where the perpetrator and the victim are not both of the same race and also of the same political party. For it is manifest that where they are of different races and of different political parties it will be impossible, as to the former at all times, and as to the latter in times (very frequent and prolonged) of high political excitement, to eliminate these circumstances from such transactions.

But the bill even goes further than this. If three men can be found in a State who will make oath according to their belief that any conflict, either actual or apprehended, any injury to person or estate, consummated or threatened, had for its basis any of the reasons and the causes mentioned in the bill, the court must undertake the investigation "into the circumstances" of such killing, injury, or threatening, and report the evidence taken and the conclusions of fact to the President, notwithstanding it may be established that the transaction, whatever it may be, had no such cause or basis, and was in fact between persons of the same race and color and of the same political party, and was the result of causes wholly different from those mentioned in the bill, and even of causes which rendered the conduct of the actor entirely justifiable.

The bill contains so serious an attack on the power, jurisdiction, and dignity of the States, is so harmful in its effects, so utterly at variance with the Constitution and being directed in the main, as this avowedly is, against the Southern States exclusively, that we feel that we are not only warranted, but required, to make such examination into the powers, jurisdictions, and rights of the States, and the powers of Congress, as may be necessary to defeat it.

We shall therefore inquire as to the depository nature and extent under our system of the governmental powers to protect the rights of persons and property against assaults and violations by private individuals, when such wrongs are committed or threatened within the limits or jurisdiction of a State. To make this examination full and perfect it is necessary to consider somewhat carefully the nature, purposes, and objects, as well as the powers of the Government of the United States, in connection with the powers and duties of the States; and also the scheme of government which the two combined have formed.

STATE AND FEDERAL GOVERNMENTS BOTH PARTS OF A WHOLE

The Federal and State Governments are complements of each other; both are essential parts of a whole. To conceive a government having sole jurisdiction over a people, but with no other powers than those granted to the Federal Government by the Constitution of the United States, would be to conceive an anomaly as well as an impotent abortion. Such a government would possess no power over contracts, over marriage and divorce, the civil relations of husband and wife over descents, inheritances, and testaments, over titles and tenures to property, over the great fundamental rights of life, liberty, and property, and the pursuit and acquisition of happiness. On the other hand, a government considered as a whole and not as a complement of another which possessed no other powers than those now belonging to the States would be utterly powerless outside its own territorial domain and without essential powers within it. It could possess no army, no navy, grant no patents or copyrights, coin no money, emit no bills of credit, fix no standard of weights and measures, levy no tonnage, duties, or taxes on imports or exports, receive or send no ambassadors, ministers, or consuls, enter into no treaties or alliances, nor regulate in any way commerce between itself and other States or foreign nations. It could neither make war nor conclude peace.

"We have in our political system," says Chief Justice Waite in *United States* v. *Cruikshank* (92 U.S., p. 549), "a Government of the United States and a government of each of the several States." And Judge Miller, in the *Slaughterhouse Cases* (16 Wall., p. 82), said that "the existence of the States was essential to the perfect working of our complex form of government"; complex in this, that we have two distinct governments, operating on and regulating the rights and duties of the same people, each having distinct and separate powers and charged with distinct and separate duties. No citizen of a State can look to either government for the measure of his allegiance or as the sole protector of his rights. The system is that the people of each State may with exact truth be said to have two constitutions—one their own separate constitution under which they exercise State powers and perform State duties solely, and according to their own judgment as to what is best for the common weal; the other, the Constitution of the United States, which is the common Constitution of each and of all the States, and under which each discharges Federal functions in connection with its sister States. Both are essential to perform the full measure of governmental functions and protect and secure the people in all their rights. Chief Justice Waite, in *United States* v. *Cruikshank* (92 U. S., p. 550), speaking for the Supreme Court, used this expressive language:

"The people of the United States resident within any State are subject to two governments—one State, one National. The powers which one possesses the other does not. They were established for different purposes and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad."

This great and fundamental truth is so often obscured and neglected in practice that we deem it our duty to endeavor to recall it to attention of the Senate and of the country.

THE UNITED STATES THE FINAL JUDGES OF THEIR OWN POWERS

It is no part of our purpose to reopen the question of State rights, as settled by the late war. Whatever of power was lost to the States by that conflict we acknowledge is lost irrevocably; whatever was gained in it by the United States is an acquisition that we shall not attempt to disturb. Whatever may be the mere historical truth as to the mode of the formation of the Federal Constitution—whether it was created by the people of the several States or by the people of the United States aggregated in one mass—it is now no longer a matter of dispute that the powers granted to the Federal Government by the Constitution of the United States are irrevocable except by successful revolution. It is also now established that the Government created by it is, through its judicial department, the final judge of the extent of all its granted powers which can by their nature come under review in a case in a court, and that the political departments of the Government are the final judges of the extent of all the other granted powers. The right of State interposition to arrest usurpation by the Federal Government, whether by nullification or secession, if it ever existed, has now gone forever. We concede this fully and unreservedly.

This great power of final arbitrament carries with it the highest and most solemn duty to judge carefully—impartially—not to usurp on the one hand powers not granted nor, on the other, to abdicate duties imposed on the Government by the Constitution. The people have a right to demand that the agents and officers of the Federal Government, which, though limited in the number of its powers, is supreme wherever its powers extend, shall be careful not to disturb or disarrange the scheme of government which they ordained nor alter the divisions of powers between the two governments which they have established.

THE STATES, ESSENTIAL BASES OF OUR SYSTEM

The Federal Constitution, whether framed by the people of the several States—the people of each State acting for their State—and as a political organization known as a State or not, came after the formation of the States. It is based on the previous existence and on the subsequently continued life of the States. Without States then existing it could not have been created. It had no force as a constitution till ratified by nine States and then only "between the States ratifying" it. After its ratification it could not have gone into operation except by and through the active agency and cooperation of the States existing as separate political entities, and acting as separate and distinct political organisms. No President could then have been, nor can now be, constitutionally elected except by electors whom, by the terms of the Constitution itself, "each State shall appoint in such manner as the legislature thereof may direct." No Representative could be elected, nor can now be, except by voters whose qualifications are to be fixed by the State from which he comes. Representatives are "apportioned among the several States," and Senators, "two from each State," are "chosen by the legislature thereof"; and each Senator and Representative must be "an inhabitant of that State in which (or for which) he shall be chosen." The words "State" and "United States" appear everywhere in the Constitution, in every article, and almost in every clause and sentence. Strike them from the Constitution and the Government would be without a name among the nations of the earth and the whole instrument would be unmeaning jargon, with no intelligent ideas left in it. The name of the Government itself created by the Constitution is "United States." The Constitution, as itself declares, was ordained and established "for the United States of America." The legislative power is vested not in a legislature or parliament or national assembly, but in "the Congress (that is, the meeting or assembling) of the United States." The executive power is vested not in a king or emperor or consul but in a "President of the United States"; all other officers are "officers of the United States." The "militia of the several States" are "called into the service of the United States," and not into the service of the Government, or the President, or the Congress. The judicial power of "the United States," not of the Government or Congress, is "vested" in courts provided for in the Constitution. These courts have jurisdiction "in controversies to which the United States shall be a party"; and between "two or more States"; and "between citizens of different States." Trials of crimes "shall be in the State" where committed. And "treason against the United States," not against Congress, the President, or the Government, or the Union, is committed only "by levying war against them or in adhering to their enemies." Essential powers are recognized in the States, and equally important powers prohibited to them by that name, and duties are imposed on them as "States."

In the attestation clause of the Constitution it is said: "Done in convention, by the unanimous consent of the States present," and his attestation is signed by George Washington, as President, "and deputy from Virginia," and by the deputies from each of the 12 States present, each being separately named, Rhode Island not being present. And in the tenth amendment it is declared that all the powers granted by the Constitution are "delegated to the United States," not to Congress, the President, the Government, or the Union. And in the fourteenth amendment the public debt is declared to be the debt "of the United States," and the "United States" are prohibited from assuming any debt incurred in aid of "rebellion or insurrection against the United States," and in the fifteenth amendment "the United States" and the several "States" are prohibited from denying or abridging the right to vote in certain cases.

Whilst it is true that the scheme of the Constitution was "to make us one people, with one common country, for all the great purposes for which it was established," as was said by Chief Justice Taney, it is also true, as declared by Chief Justice Marshall, in *McCulloch* v. *Maryland* (4 Wheat. 403), that "no political dreamer was ever wild enough to think of breaking down the lines which separate the States and compounding the American people into one common mass." And it is also true that the American people, considered as one common mass, and not as the people of the several States, cannot perform any single function or exercise any single political power without in effect revolutionizing our whole system.

We recall these familiar truths, found on the face of the Constitution and expressed in its very words, because their import and effect seem to have lost their significance in some quarters.

STATES ARE FREE, EQUAL, AND SOVEREIGN

It is undisputed that the States were free, equal, sovereign, and independent at the time of the formation of the Constitution; that each possessed all the powers which any government might rightfully possess. In the language of the Declaration of Independence, "they had full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

As such States they formed a Union under the Articles of Confederation, and as such they withdrew from that Union, each for itself, by a separate ratification of the Constitution of the United States, and contrary to the will of at least two of their number. As we have said, it is probably immaterial whether we regard the historical truth—that the States formed the Federal Constitution—as a constitutional truth or not, for the main questions which depended upon that are settled. The truth is undeniable that each State, or the people of each State in their separate capacity as organized political communities, organized into States, possessed at the adoption of the Constitution all governmental power. It is equally true that, possessing these powers, they had the right to alter their governments, "and to institute a new government, organizing its powers in such form as to them shall [should] seem most likely to effect their safety and happiness." They did so alter and organize it, delegating, each separate State, a part of its own powers, to be exercised by the whole, i. e., the United States, and reserving each to itself separately, or to its people, the great mass of powers not delegated. The government thus formed was a government of each of the States, having jurisdiction to the fullest extent of the undelegated and unprohibited powers, and a Government of the United States. The Government of the United States meant no more than, and means no more now, than the common or general government of the States of Massachusetts, New York, Virginia, and the others united. The phrase "United States" means no more nor less than the 13 States then and the 38 States now, united for the purposes mentioned in the instrument of Union—the Constitution of the United States of America.

POWERS CONFERRED ON UNITED STATES SUPREME

The common or general powers thus conferred on the whole (not any power usurped) are necessarily supreme as against any adverse separate State action. This resulted logically from the mere fact of the establishment of a common constitution, since the surrender by each State, or by the people of each, of powers to a common agency to be exercised by such agency for the good of all the States, necessarily implied an engagement on the part of each and all to submit to the exercise of the powers so surrendered by the agency appointed for all and by all. A lawful refusal to do this would be in itself a disruption of the common government thus formed, since it would leave this common government without authority to do the very thing for which it was established. The declaration in article 6, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; * * * anything in the constitution or laws of any State to the contrary notwithstanding," is nothing more than the expression of what, without it, was an undoubted truth.

Speaking of the supremacy of the Government of the Union in *McCulloch* v. *Maryland* (4 Wheat. 405) Chief Justice Marshall said:

"This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all, it represents all, and acts for all."

But whilst this is true, it is also true that this supremacy of the Constitution and of the laws and treaties authorized by it is expressly limited within the line which bounds the delegated powers. Beyond this the Government of the United States has no power whatever, and its acts outside of and beyond these powers are in law simply null, mere nothing. We quote on this point the expressive words of Chief Justice Waite, speaking for the Supreme Court in *United States* v. *Cruikshank* (92 U. S., p. 550):

"The Government thus established and defined is to some extent a Government of the States in their political capacity. It is also for certain purposes a Government of the people. Its powers are limited in number, but not in degree. Within the scope of its powers, as enumerated and defined, it is supreme and above the State; but beyond it has no existence."

Mark the expression—beyond its enumerated and defined powers "it has no existence."

THE UNION IS VOLUNTARY AND OF EQUAL STATES

Another great truth lies at the foundation of the Constitution, and which must never be forgotten or obscured in considering the relations of the several States under it with each other and with their common Government—the Government of the United States. It is that this Union under the Constitution was in its formation the voluntary association of free and equal States, each free to go in or to stay out; each equal in its Federal and in its reserved rights; equal in dignity; equal in all political capacities. Each State acceding to it (or the people of each State, if that expression be preferred) claimed the capacity to discharge all its Federal duties arising under the Constitution, as well as its capacity to exercise all the powers of government reserved to it. This claim was acknowledged by each and by all, and was, in fact, the very basis of the Union as it was formed. If any one of the then existing 13 States had contrary convictions which rendered association and union with any of the others undesirable, it had the undoubted right to refuse accession to the Union. It had the undoubted power to decide this question for itself, and did decide it irrevocably when it ratified the Constitution. That decision involved and solemnly adjudged the essential truth that its co-States were such as it claimed itself to be, capable and willing to perform both their Federal and their separate State functions without the supervision or interference of others. As to new States, each original State which had acceded to the Union agreed by the Constitution itself—the supreme law of the land—to abide by the decision of the Congress of all the States, and each new State in accepting admission into the Union made the same concessions and admissions as to all the other States.

This great and fundamental truth, if it needed further support, has it in the terms of the Constitution itself. That they all agreed should be the supreme law of the land. That instrument not only owes its existence to the action of the people of the several States, but the continuous operation of the Government it established could come only from their voluntary action. The Constitution imposed duties on them the continued performance of which was essential to the Government, as has been shown. It contained no provision for a failure of any State to discharge its Federal functions, but it assumed that all would, and it left to each as a matter for its sole concern the discharge of its own separate State functions. It contained no provision for disfranchising States for a neglect of their duties, nor for compelling the States to perform them. It recognized no inequality and no incapacity, no contumacy in States, and made no provision and conferred no powers for such cases.

It imposed no restrictions or limitations upon the rights and power of one State that were not equally imposed on all the others. It prescribed no duties to the States with reference to their undoubted rights and powers over their own citizens. It secured no rights to citizens against adverse action or adverse nonaction of their State, except in the imposition of prohibitions on the exercise of a few arbitrary and despotic powers of government, which by the common consent of free people were deemed unsafe and unfit to be exercised by any government, and which we shall notice more particularly hereafter.

In the performance of this grand work—the creation of the Constitution of the United States, and of the Union under it—the grandest ever performed by any of the human race, there was, in the processes of its formation, in its express or implied provisions, no arrogated superiority, no assumed mastery on the part of any State, or the people of any State, over any other, and no distrust in the ability and good faith of any State or its people.

Massachusetts did not say to Virginia, "We distrust your ability or willingness to perform your Federal duties, or to govern in all that has not been surrendered by you to the common Government, nor prohibited to you and all other States alike;" nor did Virginia doubt Massachusetts in any of these things. There was mutual trust and confidence all around and on all sides. Without these the Constitution could not have been formed, and without them cannot be preserved. This confidence and trust were manifested in all that was done, and were attested and sealed by the declaration in the Constitution that it was the supreme law of the land, binding on all States, all magistrates, and all persons, and binding also on the agencies, the magistrates, the officers of the common Government.

This supremacy of the Constitution is universal, all-pervading, binding equally as to its negations, the reservations to the States as to the powers delegated to the Union, the things granted and the things not granted; binding as well to destroy, to make null, all that might be done or assumed to be done by the General Government outside of and beyond its powers, as to invalidate any State action within this exclusive domain. It was a double guaranty, as strong and as explicit against Federal usurpation of powers not granted as against State aggression on the delegated sovereignty of the Union.

We have now seen how the Constitution was formed, the spirit which animates its every clause and letter, the temper, the good faith of men and States, their confidence in their fellow men and co-States, the concession by each and all the States of the capacity and willingness of the people of each to discharge their Federal and National duties, and to exercise justly and fairly their reserved powers, and the entire absence of any provisions giving either to the common Government or to any of the States power to interfere in or control the administration in any State, of its reserved powers or jurisdiction. We may pause a moment to contrast this with the provisions of the present bill, which repudiates all this and seeks to establish an inquisition under national authority into the exercise by some of the States of their exclusive internal domestic jurisdiction. This inquisition is degrading to the States in which it is expected to be carried on; it impeaches their capacity and willingness to perform their separate and exclusive functions; it asserts, in the shape of a law, a supercilious and arrogant superiority on the part of some States over other States; it usurps a jurisdiction unwarranted by the Constitution.

POWERS OF THE UNITED STATES ARE DELEGATED

Looking to the whole scheme of our complex system of Federal and State governments, we find that its primal, fundamental principle, the key to its exposition is, that the powers possessed by the United States are "delegated"—that is, given or granted to them—by some political organism or organisms and are in no sense inherent or original. Before any of these powers were thus granted there were no powers in the United States; in fact, no United States existed. The United States, as they now exist as a Government, were created by the Constitution. That instrument, in the act of making the States united under it, dissolved their union under the Articles of Confederation.

The tenth amendment, adopted almost contemporaneously with the Constitution, and designed to put into constitutional form a great truth, then recognized by all, so as to prevent mistake or misconception in all after times, expressly declares that the powers possessed by the United States are "delegated," and all other powers not "prohibited" to the States are "reserved," not granted, not given, but "reserved" to the "States respectively"; not to the States in a mass, or aggregated, or united, but to the States "respectively," or to the people. The powers are not even said to be "vested" in the United States, when reference is made to their origin. They are only "delegated," and then they are said to be "vested" in the Government, and in its various departments as a consequence of this delegation. The powers thus "delegated" are not the great mass of the powers of government, with exceptions in favor of the States, but they are enumerated, specified, written in the Constitution itself, and defined and limited by it.

THE GENERAL SCHEME OF THE CONSTITUTION

The scheme of the Constitution was to make us "one people, with one common country, for all the great purposes for which it was established." (See Chief Justice Taney in *Passenger Cases*, 7 How. R. 283.)

These great purposes are expressed in the Constitution itself, in the powers delegated by it to the United States. These powers are plenary and exclusive as to all that concerns the people and States in their relations with foreign powers, both in peace and in war, including the making of treaties, the receiving and sending of ambassadors, ministers, and consuls; making war and concluding peace; intercourse and commerce with them; the protection of our people in foreign countries and outside of the jurisdiction of any State and on the high seas.

Secondly. The Federal powers extend to the regulation of relations between the States themselves and the citizens of each with the citizens of the others and between each of the States and the United States, covering commerce among the States, compacts between two or more of them, the duty of surrendering fugitives from justice and labor, the force and effect in other States of public records and judicial proceedings of each State; "the securing to the citizens of each State the privileges and immunities of the citizens of the several States," when in the jurisdiction of any State of which they are not citizens, leaving, however, to each State to determine and define the rights and privileges of its own citizens, and securing only these same privileges so defined by a State to citizens of other States when they are within its jurisdiction.

Thirdly. The power and duty to guarantee to each State a republican form of government, and to protect it from invasion or, on application of the State, from domestic and foreign violence. These were the great purposes for which the Constitution was formed, and adequate powers to attain them were granted.

All other powers delegated to the United States are either merely auxiliary to these great ends and for the support and maintenance of the common government or they are such as can conveniently and properly be exercised only by a government common to all the States. These auxiliary powers relate to the establishment of a uniform system of bankruptcy and naturalization laws; the power to coin money, to regulate its value, and the value of foreign coins in circulation here; to fix the standard of weights and measures; to grant patents and copyrights; to establish post offices and post roads; the power of taxation; to punish counterfeiting of the current coin and securities of the United States; to punish piracies and felonies on the high seas and offenses against the law of nations; to raise and support armies and support and maintain a navy, and certain powers over the militia.

These powers, in general terms, include all that are delegated to the United States. If we stop and consider them, we will see how few they are—great indeed in importance, unlimited in degree, but very limited in number. If we abstract from these powers all that relate to our intercourse with foreign nations—all that concern the relations of the States with each other, in their character as States, and their relations to the Union; all that relate only to the giving force, efficacy, and support to the United States in their exercise of their other powers—we will see how infinitely small in number are all the remaining powers, which concern only the rights, privileges, and convenience of private persons—private citizens when in the jurisdiction of a State.

These powers are:

(1) The securing to the citizens of the several States the privileges and immunities granted by any State in whose jurisdiction they may be to its own citizens.

(2) Jurisdiction over bankruptcy.

(3) Jurisdiction over naturalization.

(4) Jurisdiction over the currency.

(5) The power to establish post offices and post roads.

We look in vain to any of these powers for the power to enact this bill. But along with these powers come provisions which show the soul and spirit of the Constitution, and without which the Constitution becomes either a lifeless corpse, or, having energy and vitality, is an instrument only of oppression and wrong. These provisions recognize the absolute equality of the States, and secure fairness and impartiality in the exercise of the powers granted by the Constitution. Thus, direct taxes are required to be apportioned among the States according to their population, and all duties, imposts, and excises are required to be uniform throughout the United States; no preference is allowed in any regulation of commerce or revenue to the ports of one State over the ports of another; the levying of a tax on any article exported from any State is also prohibited, whereby the dangerous power of taxing articles mainly produced in one State or section and not in others is denied to the Government.

And then there is the great provision in article 5, which secures absolutely and forever the equal suffrage in the Senate of each State against even an amendment of the Constitution. Under this guarantee of equality Delaware, Rhode Island, and Nevada each have the same voice in this body as the great State of New York, and under it the six New England States, with a population entitling them only to 24 Representatives out of 325 allotted to all, have 12 Senators, whilst all the other States, with a population entitling them to 301 Representatives, have together only 84 Senators. New England has one Senator for a population entitling her to two Representatives, whilst the remainder of the States have one Senator to a population represented by 4.54 Representatives, or more than twice as much per capita of population.

POWERS PROHIBITED TO THE STATES

The scheme of the Constitution embraces not only a division of powers between the several States and the United States by delegation of certain specified powers to the latter, and a reservation of the others to the States, but it includes also the prohibition of certain powers to both. These powers, so far as they relate to persons, were deemed despotic in their nature, unjust in their operation, and contrary to the genius of free government; and hence, whilst prohibiting their exercise by the Federal Government, the States also surrendered them as a pledge of their fidelity to the great principles of republican liberty. Three of these powers related to the lives and liberties of persons, namely, bills of attainder, ex post facto laws, and the suspension of the great writ of habeas corpus; one to property, viz, laws impairing the obligation of contracts; and the other related only to the quality of persons in a free government, namely, the bestowing titles of nobility. These powers were refused to both. The power over contracts, however, was allowed to the Federal Government, indirectly in its power over bankruptcy.

There were some other prohibitions to the States, but they were manifestly introduced for the purpose of preventing a conflict between State powers and Federal powers, which might, but for the prohibition, have been concurrent. In all these there is not a pretense for the claim of the Federal Government to intervene between a State and its citizens for the protection and security of the great fundamental rights of persons and property and the pursuit and acquisition of happiness, all these being left to the care and protection of the States, except only in the four cases of habeas corpus, bills of attainder, ex post facto laws, and laws impairing the obligation of contracts. Of all the civil rights of men, and all the rights of person and property, only these above named, and no more, are entitled to Federal protection in favor of a citizen against his State; and this protection extends only to the prevention of State action in violation of them, as will be shown more fully hereafter. And not one of these rights is secured against State action; even in favor of citizens of another State, except to this extent: That citizens of other States should have from each State the like protection that it affords to its own citizens.

THE FIRST EIGHT AMENDMENTS

What we have said covers in general terms a description of the powers delegated to the United States and of those which were reserved by the States, as they existed under the Constitution when it was framed. It will be noted that whilst the Constitution contained an express grant and a specific enumeration of the powers vested in the Government of the United States, and that it was understood on all sides that no others could be exercised, except only such auxiliary powers as are necessary and proper to carry the enumerated powers into execution, yet it was, out of abundant caution, deemed necessary to insert in the Constitution certain prohibitions on the Federal Government. These prohibitions were deemed necessary lest Congress should claim these prohibited powers as necessary and proper in carrying out the delegated and enumerated powers.

It will be seen that not one of the powers prohibited is of the nature of a substantive and independent power, to be exercised solely to attain some end outside of the enumerated powers—some end which in itself and by itself was an object to be desired. But our forefathers had been familiar with bills or petitions of right in which certain great and fundamental rights were excepted out of the powers of government. It was complained that no such bill of rights was a part of the Federal Constitution. So in the very first Congress assembled under the Constitution, composed largely of the great statesmen who had been members of the Convention which framed the Constitution and of members of the several State conventions which ratified it, certain amendments were proposed. All of them which were ratified, as has been firmly settled, have reference solely to limitations and restrictions on the powers of the United States, the design and intent of all of them being to prevent Congress, in the exercise of its implied powers, from passing any law of the kind prohibited in the amendments.

This view is fully sustained by Mr. Madison's great speech in the House of Representatives advocating these amendments. (See Annals of First Congress, p. 432.) All the propositions of amendment looking to a restriction on the power of the States, including one offered by Mr. Madison securing against State action religious liberty and freedom of the press, and trial by jury, were rejected, thereby again affirming that all the great natural rights of man were to be left solely to the States for their definition and their security and protection.

RIGHTS SECURED AGAINST FEDERAL ACTION BY THESE AMENDMENTS

It will tend greatly to assist in understanding clearly and fully the nature of our system, and to mark the line clearly between State powers and duties on one hand and Federal powers and duties on the other, if we note here in general terms the great and essential rights which were secured against Federal invasion by these amendments, and yet were left wholly at the mercy, the will, and discretion of each of the several States, fixing, as they do, beyond controversy or dispute, the great underlying and fundamental principles of our system, that all civil rights, all rights of person and property, are left solely to the States.

These amendments, whilst leaving to the States unrestricted power, prohibited to the United States any power over and guaranteed the following against Federal action:

Freedom in religious belief and worship; freedom of speech and of the press; the right of petition; the right to bear arms; security against the quartering of soldiers in the people's houses; security against unwarrantable searches and seizures, against general warrant; security against trial for capital or infamous crimes unless on accusation by a grand jury; security against being put twice in ccc x4.

ALASKA 2016 – 022716 – 0
Recording District 311 Palmer
10/24/2016 12:57 PM Page 1 of 7

Recording District: Palmer Recording District 311, Palmer Alaska

Return To: Wiley Randolph Kuykendall
200 Grand View Court
Pearl, Mississippi 39208

THIS COVER SHEET HAD BEEN ADDED TO THIS DOCUMENT TO PROVIDE SPACE FOR THE RECORDING DATA. THIS COVER SHEET APPEARS AS THE FIRST PAGE OF THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD.

DO NOT DETACH

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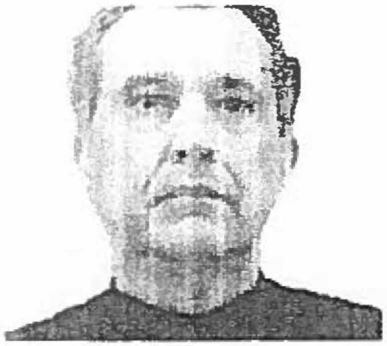
The United States of America

CERTIFICATE OF POLITICAL STATUS, CITIZEN STATUS AND ALLEGIANCE

STATE OF MISSISSIPPI) ss.
Rankin County)

Personal description of the Holder of this Certificate of Political Status, Citizen Status and Allegiance:

True name – **Wiley Randolph Kuyrkendall; Date of Natural Birth** – April 15^{th}, 1950; **Location of Natural Birth** – Magnolia, Mississippi; **Complexion** - white; **Race** – Caucasian; **Color of eyes** – green; **Color of hair** – gray; **Height** – 6 ft. 3 in.; **Weight** – 225 lbs.; **Visible distinctive marks** – none; **Marital status** – married; **Nationality and Political Status** - Mississippian, a native of the several States; **Citizen status**: white citizen; and, American citizen; and, citizen of the United States of America; and, Natural Born Native and citizen of the foreign state of Mississippi domiciled in the territorial boundaries of Mississippi, currently a citizen of Mississippi and a qualified elector of Mississippi. I under oath certify that the facts herein are true and correct under the penalties of perjury and that the photograph affixed hereto is a likeness of me.



I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State or sovereignty, of which I have been a subject or citizen, including any allegiance to or to be clothed with the fictional status of a "citizen of the United States" as a misnomer declared in 14 Stat. 27 codified in 42 U.S.C. §§§ 1981, 1982 and 1988 by Congress with said "citizen of the United States" memorialized in the Fourteenth Amendment—"and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside" having no direct access to the Bill of Rights Amendments One through Eight of the Constitution of the United States; and, with the Bill of Rights one through eight being "incorporated" at the discretion of the Courts of the United States into the fictional "citizen of the United States." Take Judicial Notice of the Fact that a "citizen of the United States" domiciled within the District of Columbia is NOT subject to the Fourteenth Amendment, but is a "qualified elector" as evidenced in DC ST § 1-1001.02(2)(B) clothed by and with the direct protections of the Bill of Rights Amendments one through eight.

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The United States of America

And further, I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity and any such use of the status of a "citizen of the United States" or "resident of the United States" under the Plenary Power of Congress using "Acts of Congress" and/or "Laws of Congress" as follows: by and through using adhesion contracts, and/or by and through using the "public rights" doctrine of accepting some benefit(s); and/or, by and through using "implied-in-law contracts; and/or, by and through any means that I have accepted some benefit, *i.e.*, "That the United States, when it creates rights [benefits] against itself, is under no obligation to provide a remedy in the courts" (*United States v.* Babcock, 250 U.S. 328, 331 (1919) being any Court of the United States arising under Article III Section 2 of the Constitution of the United States exercising the judicial Power of the United States in all Cases in Law and Equity with the only exceptions clothed under the law of necessity; and/or, that any State when it creates rights [benefits] against itself, is under no obligation to provide a remedy in a constitutional courts of one of the several States, with the only exceptions clothed under the law of necessity.

And further, (1) I have never knowingly or intentionally given my permission for any "agency" or "Federal Agency" as defined and evidenced in 49 Stat. 500-503 to maintain any records, to collect any records or to use information collected or maintained concerning me, whether in paper, electronically or any other means;

And further, (2) I have never knowingly or intentionally given my permission for any "agency" or "Federal Agency" as evidenced by 11 FR 9833-9840 (the Court shall take judicial Notice of as enacted as a Statute of the United States in 49 Stat. 502 Sec. 7 "The contents of the Federal Register Shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number;" 44 U.S.C. § 150.) to maintain any records, to collect any records or documents, or to use any information collected or maintained concerning me, whether in paper, electronically or any other means;

And further, (3) all "Federal Agencies" and "agencies" including the Internal Revenue Service (included in 88 Stat. 1907) enacted into a Statute of the United States evidenced by 88 Stat. 1896-1910 (P.L. 579—Dec. 31st, 1974) for all "Federal Agencies" and "agencies" is limited strictly to ""maintain" includes maintain, collect, use or disseminate" (5 U.S.C. § 552a(a)(3)) to any records and as evidenced in 88 Stat. 1897;

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The United States of America

And further, (4) the records maintained, collected or used by all "agencies" and "Federal Agencies" is limited strictly as evidenced in 5 U.S.C. § 552a(a)(2)—Records maintained on individuals to "the term 'individual' means a **citizen of the United States** or an **alien lawfully admitted for permanent residence**") is a ***sine qua non*** prohibiting the Government of the United States, all "Federal Agencies" and all "Agencies" from maintaining, having, collecting or using all records or documents concerning me as I am not a "citizen of the United States;" and, I am not an alien lawfully admitted for permanent residence, wherein no evidence or documents of any type has been disclosed to me to date authorizing any "agency" or "Federal Agency" to maintain, collect or use any records or documents concerning me.

And further, if the Internal Revenue Service ("IRS") has made any "determinations" of me of any alleged "federal tax liability" and "Taxable Years" of money due and owing under the "Internal Revenue Laws" of Subtitle A, Subtitle B, Subtitle C, Subtitle D or Subtitle E of in Title 26 of the United States Code as the term "taxpayer" is defined in **26 U.S.C. § 7701(a)(14** in accord with term definition in **26 U.S.C. § 7701(a)(23)—Taxable Year** "taxable income [§ 63] is computed [§ 3] under **Subtitle A"** and in accord with the term definition in **26 U.S.C. § 7701(a)(16)–Withholding Agent—"The term "withholding agent" means any person [26 U.S.C. § 7701(a)(1)] required to deduct and withhold any tax [Subtitle A, B, C, D or E] under the provisions of section 1441 [This is only Subtitle A—nonresident alien], 1442 [This is only Subtitle A—foreign corporation], 1443 [This is only Subtitle A—Foreign Organization], or 1461 [This is only Subtitle A—Hold harmless clause if money is withheld from § 1441; or, § 1442; or, § 1443 entities]; wherein**, I deny that I am a § 1441 "entity; or; that I am a § 1442 "entity;" or, that I am a § 1443 "entity;" **and further,** the IRS is required to disclose all records collected and all records used under 26 U.S.C. § 6110 of me under the preceding "Internal Revenue Laws" cited, **which has not been accomplished to date**.

And further, I renounce, rescind my signature and abjure from all of the following: all adhesion contracts and documents known or unknown; and, all implied-in-law contracts and documents known or unknown, all "public rights" doctrine contracts and documents known or unknown; and, all other contracts, agreements and documents that would in any way attach or subject me by any means known or unknown with the only exception being under the Law of Necessity.

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The United States of America

And further Congress may vest the Courts of the District of Columbia with administrative or legislative functions, which are not properly judicial, but it may not do so with any Federal Court established arising under Article III of the Constitution of the United States either directly or by appeal including any District Court of the United States, any United States District Court, any Circuit Court of Appeals and the Supreme Court of the United States. *Postum Cereal Co, Inc. v. California Fig Nut Co.*, 272 U.S. 693, 700-701 (1927).

And further, The plenary Power of Congress in the "District of Columbia" is evidenced by "Acts of Congress," "Laws of Congress" or "laws of the United States of America" including but not limited to the "Internal Revenue" Taxation of the National Government that is lawfully and legally confined within the District of Columbia under the Plenary Power of Congress.

And further, I renounce, rescind my signature and abjure from any venue and jurisdiction not clothed within a constitutional court of one of the several States exercising the judicial Power of one of the several States with me unknowingly waiving my unalienable rights secured in a particular constitution of whichever one of the several States I am domiciled with the only exception being under the Law of Necessity.

And further, I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity of the following: all regulations promulgated or enforced by all agencies of the "headless fourth branch of government" and "administrative state;" and, all federal agencies especially those knowingly or unknowingly that are "independent agencies" or "independent establishments," and, all state agencies by and through all forms of grants, cooperative agreements, memorandums of understanding, agreements and documents known or unknown to me including but not limited to the State Plans that are inextricably intertwined with federal agencies and federal regulations that are not "substantive regulations," *i.e.*, "legislative rules" as held in *Chrysler v. Brown*, 441 U.S. 281 (1979); and, only under the laws of necessity would I be subject to any such regulation(s) unless they are identified having the "force and effect of law" as a "substantive regulation," *i.e.*, a "legislative rule" in strict compliance with the Administrative Procedure Act of 1946 codified in 5 U.S.C. chapters 5-9; and, specifically identified in the "proposed rule" published in the Federal Register that said regulation(s) is in compliance with 5 U.S.C. § 553(b); and, specifically identified in the "final rule" published in the

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The United States of America

Federal Register stating compliance with 5 U.S.C. 553(b)(c)(d) and in compliance with 1 CFR § 21.40, 1 CFR § 21.41 and 1 CFR 21.43.

And further, that I have not knowingly or intentionally waived or surrendered any of my unalienable rights and birthright to any of the above, which is secured in this constitutional Republic founding documents including the Declaration of Independence, The Articles of Confederation, the Constitution of the United States and the constitution of one of the several States of this Union of States that I am currently domiciled; and, that I will support and defend the Constitution of the United States and Laws of the United States as amended by the qualified Electors of the several States against all enemies, either foreign or domestic; and, that I will support and defend the constitution of the several State as amended by the qualified Electors of the citizens of that particular one of the several States that I am currently domiciled against all enemies foreign and domestic; and, that I will bear true faith and allegiance to the Constitution of the United States and the constitution of the particular one of the several States that I am domiciled; and, that I take this obligation freely, without any mental reservation or purpose of evasion, so help me God.

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The United States of America

Viley R. Kuykendall
(Complete and true signature of holder)

Sworn and subscribed before me on 10-24 2016 being a Notary Public in and for the State of Mississippi.

My Commission expires on 1-13-17.

Diane Odom
Signature of Notary Public

DIANE ODOM
NOTARY PUBLIC
ID No. 76152
My Comm Expires
Jan 13, 2017
RANKIN COUNTY
STATE OF MISSISSIPPI

[SEAL]

SEAL OF THE DISTRICT RECORDER
OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

United States of America } ss
State of Alaska

THIS IS TO CERTIFY that the foregoing is a full, true and correct copy of the document as it appears in the records and files of my office.

IN THE WITNESS WHEREOF, I have hereunto set my hand and have affixed my official seal at PALMER, Alaska.

This 24th day of October 2016

Recorder

By Sarah Rennie

ATTACHMENT 9 - PAGE 7 of 7

MISSISSIPPI MAIL-IN AND NVRA AGENCY VOTER REGISTRATION APPLICATION

IMPORTANT!

- If you are not registered to vote where you now live, you can use this form to register to vote or report that your name or address has changed.
- If you have questions call your county Circuit Clerk or call the Secretary of State at 1-800-829-6786.
- Complete all sections of this form and mail it to your county Circuit Clerk AT LEAST 30 days before the election in which you want to vote.
- If you are qualified and the information on your form is complete, you will be mailed a voter card that tells you where to vote.
- If you decline to register to vote, your decision not to register will remain confidential and will be used only for voter registration purposes.
- If you do register to vote, the office at which you submit this application will remain confidential and will be used only for voter registration purposes.

FILED AUG 24 2015 REBECCA N. BOYD, CIRCUIT CLERK BY

If this form is completed at an NVRA voter registration agency, record the name of the agency: ____

Section I. APPLICATION TO REGISTER TO VOTE

Please select one of the following: New Registration ☐ Change of Information ☒

1) Are you a citizen of the United States of America? Yes ☒ No ☐
2) Will you be 18 years of age on or before election day? Yes ☒ No ☐
3) Would you like to serve as an Election Day Poll Worker? Yes ☐ No ☒

NOTE: If you checked "No" in response to questions 1 or 2, do not complete this form.

CIRCLE (Mr.) Mrs. Miss Ms.	Last Name: KUYRKENDALL	First Name: WILEY	Middle/Maiden Name: RANDOLPH	Suffix: (JR, III)
Physical Home Address (Number & Street/Road/Dorm/Apt. #)*: 200 GRANDVIEW CT	City: PEARL	County: RANKIN	State: MS Zip: 39208	
Mailing Address (if different from above, include zip code):		Date of Birth: (mm/dd/yy) 4/15/1950		
Mississippi Driver's License Number (if you do not have a driver's license, then list the last 4 digits of your Social Security Number): ** 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				

**If you reside at a non-traditional address attach a drawing or locational map of your address.*

***Identification Requirement: If you do not have a driver's license or social security number, and this form is submitted by mail, and you have never registered to vote in the county you are now registering in, you must send, with this application, either a) a copy of current and valid photo identification, or b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If you do not provide the information requested above, you may be required to provide to election officials either (a) or (b) above the first time you vote after January 1, 2004 at a voting place or by absentee ballot.*

Section II. IF YOU WERE PREVIOUSLY REGISTERED UNDER A DIFFERENT NAME OR ADDRESS, LIST THAT NAME OR ADDRESS

CIRCLE Mr. Mrs. Miss Ms.	Last Name:	First Name:	Middle/Maiden Name:	Suffix: (JR, III)
Previous Address (Number & Street/Road/Dorm/Apt. or Lot #)				
Previous City:	Previous County:	Previous State:	Previous Zip:	

Section III. VOTER DECLARATION- Read and Sign

See Public Record in Palmer Recording District in Palmer, Alaska #2015-012506-0 Certificate of Political Status, Citizen Status and Allegiance.

I swear under the Penalties of Perjury that I am a citizen of Mississippi, I will have lived in this state and county for at least 30 days before voting, and if a resident of a municipality, I will have lived in the municipality for at least 30 days before voting. I have never been convicted of any of the following crimes against the State of Mississippi: murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, bigamy, armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, carjacking, or larceny under lease or rental agreement, or I have had my rights restored as required by law. I have not been declared mentally incompetent by a court. Furthermore, I certify that I am at least eighteen (18) years old (or I will be before the next general election), the information given by me is true and correct and that I have truly answered all questions on this application for registration, and that I will faithfully support the Constitution of the United States and Constitution of Mississippi, and will bear true faith and allegiance to the same.

X [signature] ____ Date: 8/7/15

Signature (or mark) of applicant

X ____ Date: ____

If applicant is unable to sign, the person who assisted the applicant must sign above

Daytime phone number(s) where applicant can be reached: ____

Was any person or group involved in the process of completing this form other than the voter? If yes, the person or group must provide the information below:

Name: ____

Address: ____

WARNING: FALSE REGISTRATION IS A FELONY. The penalty for conviction of false registration is imprisonment for not more than five (5) years or a fine of not more than five thousand dollars ($5000), or both. *Miss. Code Ann § 23-15-17.*

FOR OFFICIAL USE ONLY

11/2009

TITLE 28

United States Code

Congressional Service

Pages 1487–2174

80th Congress — 2d Session

Epochal Legislation

New

Title 28 — United States Code
Judiciary and Judicial Procedure

Approved June 25, 1948
Effective September 1, 1948

WEST PUBLISHING CO. EDWARD THOMPSON CO.

Yellowstone National Park in Montana and Idaho is derived from said section 27. Other provisions of said section are incorporated in sections 631 and 632 of this title.

A provision of section 196 of title 28, U.S.C., 1940 ed., for furnishing rooms and accommodations at Casper was omitted as obsolete, upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available there.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for appointment of deputies and maintenance of offices by the clerk and marshal were omitted as covered by sections 541, 542, and 751 of this title.

Section 132—Section Revised

Based on title 28, U.S.C., 1940 ed., § 1, and section 641 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 19).

Section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed., which applied only to the Territory of Hawaii. The revised section, by extending it to all districts, merely recognizes established practice.

Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in sections 133 and 134 of this title. The remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.

Section 133—Section Revised [5]

Based on title 28, U.S.C., 1940 ed., § 1 and notes; sections 641, 643, 863, and 864 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions; District of Columbia Code, 1940 ed., § 11–301 (Apr. 12, 1900, ch. 191, §§ 34, 35, 31 Stat. 84, 85; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1901, ch. 854, § 60, 31 Stat. 1199; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; Jan. 7, 1913, ch. 6, 37 Stat. 648; July 30, 1914, ch. 216, 38 Stat. 580; Mar. 3, 1915, ch. 100, § 1, 38 Stat. 961; Apr. 11, 1916, ch. 64, § 1, 39 Stat. 48; Feb. 26, 1917, ch. 120, 39 Stat. 938; Mar. 2, 1917, ch. 145, §§ 41, 42, 39 Stat. 965, 966; Feb. 26, 1919, ch. 50, § 1, 40 Stat. 1183; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; July 9, 1921, ch. 42, § 313, 42 Stat. 119; Sept. 14, 1922, ch. 306, § 1, 42 Stat. 837; Jan. 16, 1925, ch. 83, § 3, 43 Stat. 752; Feb. 12, 1925, ch. 220, 43 Stat. 890; Feb. 13, 1925, ch. 229, §§ 1, 13, 43 Stat. 936, 942; Feb. 16, 1925, ch. 233, §§ 2, 3, 43 Stat. 946; Mar. 2, 1925, ch. 397, §§ 1–3, 43 Stat. 1098; Mar. 3,

[5] Provisions for one district judge in the Southern District of Indiana were inserted in this section by Senate amendment. See Senate Report No. 1559.

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